THE POLITICS OF RIGHTS OF NATURE

STRATEGIES FOR BUILDING A MORE SUSTAINABLE FUTURE

CRAIG M. KAUFFMAN
PAMELA L. MARTIN

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1

RIGHTS OF NATURE FOR 2030 AND BEYOND

"Water is life." It gives life for all of us: humans, fish, trees, deer—indeed, all living beings. Yet the totality of this statement and the deep understanding of our connection to the planet gets lost in everyday life—in city planning, economic development, and the choices we make as individuals, governments, and communities to allow our natural world to be depleted and destroyed. In 2019, the United Nations (UN) scientific body charged with studying Earth's biodiversity and ecosystems, the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), issued a report concluding that human activity is driving the mass extinction of animal and plant species at a greater rate than ever before in human history (Díaz et al. 2019, 3). Existing environmental and human rights laws are clearly unable to provide for ecologically sustainable development or the health and well-being of many communities (Hadden and Seybert 2016). The IPBES report notes that "goals for . . . achieving sustainability cannot be met by current trajectories, and goals for 2030 and beyond may only be achieved through transformative change across economic, social, political, and technological factors"; it defines the needed change as "a fundamental, system-wide reorganization across technological, economic and social factors, including paradigms, goals and values" (Díaz et al. 2019, 5).

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With the onset of climate change, prospect of mass extinction, and the closing window of opportunity to take meaningful action, a growing coalition of activists, scientists, lawyers, policymakers, and everyday people from around the world are calling for Rights of Nature (RoN) to be legally recognized in order to stimulate and guide this transformative systemic change. They are creating new laws that recognize natural ecosystems as subjects with inherent rights (implying humans' responsibility to provide for their well-being) and are appealing to courts to protect those rights. By January 2021 at least 178 legal provisions recognizing RoN (e.g., constitutions, laws, regulatory policies, and court rulings) existed in seventeen countries spanning five continents, and thirty-seven more legal provisions were pending in ten other countries.

Initiatives also exist to recognize RoN in international law, including the UN's Harmony with Nature Programme and the proposed Universal Declaration of the Rights of Mother Earth (Global Alliance for the Rights of Nature 2010). RoN is supported in UN reports and General Assembly resolutions,[1] in Pope Francis's (2015a) encyclical letter *Laudato si'*, and in the policy of the International Union for Conservation of Nature (2016). It is recognized by the Inter-American Court of Human Rights (2017) and acknowledged by the UN's 2030 Agenda for Sustainable Development (United Nations General Assembly 2015b), the Convention on Biological Diversity (Conference of the Parties to the Convention on Biological Diversity 2012), and other international texts related to sustainable development. In fifteen years, RoN has gone from being a radical idea espoused only by a handful of marginalized actors to a legal strategy seriously considered in a wide variety of domestic and international policy arenas.

Children and young people are a major part of the struggle to prevent ecosystem destruction, and they represent a hopeful future. In 2018, twenty-five Colombian young people, ages nine through twenty-five, sued the Colombian government to stop deforestation in the Amazon rain forest that was contributing to climate change, arguing that this violated their rights to a healthy environment, life, health, food, and water. The case made it to the Supreme Court of Justice of Colombia, which issued a groundbreaking ruling. Commenting that environmental degradation—not just in the Amazon but worldwide—is so significant that it threatens "human existence," the court declared the Colombian

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Amazon a "subject of rights," and ordered the government to develop an action plan to reduce deforestation to zero, with measurable strategies, and to restore the forest (Corte Suprema de Justicia de Colombia 2018). Like water, the forest is life.

Colombia's court ruling reflects a growing recognition that human rights, like the right to a healthy environment—which is recognized by more than ninety countries—are dependent on the well-being of ecosystems that provide the conditions for life. For this reason, the Inter-American Court of Human Rights (2017, 28–29) recognized that protecting RoN is important for protecting not only the Earth's biodiversity but also the human right to a healthy environment.

Much is written on the philosophy and legal doctrine behind RoN, but few studies analyze the politics behind its creation and implementation or its effects on the politics of sustainable development. This book seeks to fill that gap. It tells the story of how community activists, lawyers, judges, scientists, government leaders, and ordinary citizens from around the world formed a global movement to advance RoN as a solution to the environmental crises facing the planet. It analyzes their efforts to use RoN as a tool for constructing a more ecocentric sustainable development paradigm capable of achieving the UN's 2030 Agenda for Sustainable Development "in harmony with nature" (United Nations General Assembly 2015b). This book tells the story of RoN not only as a transformational norm that goes beyond traditional human rights, like the right to live in a clean environment, but also its influence on new governance models that recognize a needed shift in institutional organization and laws in order to live in harmony with Nature.

We dedicate this book to those RoN defenders, advocates, scholars, and citizen participants who are creating transformational normative and institutional change at local and global levels. Such transformation weaves Western and non-Western (including Indigenous) ways of thinking and being into legal frameworks to lead sustainable change. We hope that our in-depth analysis of RoN laws, activist networks, and policy and governance outcomes provides a platform from which to engage serious discussions on aligning our legal and governmental institutions with our planetary needs and provides pathways for communities who are or will be organizing around such norms and legal provisions.

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WHAT DOES "RIGHTS OF NATURE" MEAN?

In practice, people use the term *Rights of Nature* to refer to two things that are related but conceptually different: (1) a legal philosophy and (2) legal provisions that codify this philosophy by recognizing ecosystems as subjects with rights. Failing to distinguish between these two meanings has led to some confusion, and some current debates, which we discuss in this book, have to do with whether these two concepts should be combined and, if so, how.

EARTH JURISPRUDENCE: THE RIGHTS OF NATURE APPROACH

Often, RoN is used to refer to a legal philosophy known as Earth Jurisprudence (Berry 1999; Burdon 2011; Cullinan 2011b). Efforts to implement this legal philosophy are sometimes referred to as taking a RoN approach even if they do not include RoN legal provisions. Earth Jurisprudence asserts that there is a lawful order to the universe that maintains a "web of life" (Hosken 2019). All elements of Nature, including humans, are inextricably connected into this order and linked to one another through interdependent relationships. Consequently, human well-being is dependent on the well-being of the ecosystems that sustain all life. As Liz Hosken (2019) notes, "Earth is the 'Primary Text,' the source of the laws that govern all life, including our own." Earth Jurisprudence argues that "humans must adapt their legal, political, economic, and social systems to be consistent with" the way the natural world actually works rather than fighting against this lawful order and trying to force Nature to conform to human will (Cullinan 2011a, 13). This is the fundamental transformation in systems and paradigms that RoN advocates believe is necessary to address looming climate and biodiversity crises.

Western law largely pretends that the laws of physics, chemistry, and biology do not apply. David Boyd notes that this produces "outcomes that are at odds with reality. For example, any biologist will tell you that humans are animals. But the law disagrees" (2017, xxv). One problem is that the law has not evolved to keep pace with scientific advancements. Today's legal system is based on a mechanistic view of the world that emerged during the scientific revolution of the sixteenth and seventeenth

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centuries, one that sees Nature as a machine composed of fragmented, independent parts. At that time, lawyers "fragmented the legal order from a holistic system of customary laws adapted to the practical requirements of human relationships into an aggregate of component parts" (Ito 2019, 321–322). The previous view of the world as a living organism was replaced with a new view of it as stocks of independent resources to be extracted to produce economic wealth.

Scientists now understand that the world is not a collection of discrete parts, but rather "a dynamic and fluid interconnected community of life best understood in terms of patterns and relationships" (Ito 2019, 9). Far from being individual stocks of resources, Nature comprises complex, nested, living ecosystems whose parts are all interconnected in ways that humans do not fully comprehend. Consequently, it is folly to think that intensively extracting one element of an ecosystem (like water or fossil fuels) will not impact the rest of it. We are learning the hard way that doing so produces unanticipated, and often devastating, results for people.

As Mumta Ito notes, "Science also acknowledges that Nature sustains life through ecological principles that are generative rather than extractive" (2019, 9). If the law is to help solve the problems of climate change and mass extinction, legal systems need to be restructured to reflect the fact that Nature comprises holistic, dynamic, multidimensional, complex adaptive systems and that human societies are among these systems (i.e., human societies are a subset of Nature; Ito 2019, 315). The law must value Nature (understood as nested systems) primarily for its ability to generate the conditions for life rather than for providing stocks of resources to be extracted.

According to Boyd, the disconnect between Western law and the laws governing the natural world stems from three related ideas: "The first is anthropocentrism—the widespread human belief that we are separate from, and superior to, the rest of the natural world. . . . The second is that everything in Nature, animate and inanimate, constitutes our property, which we have the right to use as we see fit. The third idea is that we can and should pursue limitless economic growth as the paramount objective of modern society" (2017, xxii–xxiii).

These three ideas provide the foundation of today's dominant development paradigm (Kauffman and Martin 2014; Price 2019). Earth Jurisprudence

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scholars argue that the embedding of these ideas into human governance systems has caused the systematic destruction of ecosystems needed to sustain life. For a time, human societies simply moved on to other ecosystems. The problem is that this destruction is now happening at a planetary scale. As the saying goes, there is no Planet B.

Earth Jurisprudence aims to fundamentally transform legal, socioeconomic, and governance systems, replacing these three destructive ideas with a different paradigm that prioritizes sustaining ecosystem functioning. Catherine Iorns Magallanes and Linda Sheehan summarize the fundamental principles of this paradigm, developed by Thomas Berry (1999), as follows:

> The universe is the primary source of law; human laws and legal and governance systems are only derivative. Berry describes the universe as a "communion of subjects" rather than a "collection of objects", and argues that Nature has inherent value and an inherent right to exist. . . . [H]umans must live in accordance with the relationship and principles that constitute the Earth community, and human governance systems at all times must take account of the interests of the whole Earth community. . . . Implications of these fundamental principles include requirements that humans must:
>
> - Determine the lawfulness of human conduct by whether or not it strengthens or weakens the relationship that constitute the Earth community;
> - Maintain a dynamic balance between the rights of humans and those of other members of the Earth community on the basis of what is best for the Earth as a whole. (Magallanes and Sheehan 2017, 74–75)

More than rights, Earth Jurisprudence stresses the responsibilities that humans have toward other members of the ecosystems where they live—what ecological scientists call biotic communities (Mucina 2019)—due to the fact that all members are tied together through interdependent, reciprocal relationships. Rather than exponential growth in consumption and production, Earth Jurisprudence prioritizes maintaining balance and a dynamic equilibrium within healthy ecosystems, encapsulated by the catchphrase "living in harmony with Nature." Recognizing that human well-being is dependent on the well-being of ecosystems that provide the conditions for life, Earth Jurisprudence places the well-being of all members of the biotic community (including humans) ahead of human self-interest alone. Part of the paradigm change is this reconceptualization of human self-interest.

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RIGHTS OF NATURE LEGAL PROVISIONS

Legal provisions recognizing ecosystems as subjects with rights is the second way in which RoN is used. As we discuss in chapter 6, RoN legal provisions are not the only way to codify Earth Jurisprudence principles, but they are the most common way of doing so in Western legal systems, both nationally and internationally. This is why we focus on RoN laws in this book. Before discussing RoN legal provisions below, we want to highlight three points regarding the distinction between RoN as legal philosophy (Earth Jurisprudence) and RoN as legal provision.

First, the ultimate goal of the RoN movement is a paradigm shift: to change the way people understand humans' relationship with Nature, change their behaviors in a way that is more ecologically sustainable, and change formal and informal rules to reinforce these behaviors. RoN legal provisions are seen as a tool to achieve this goal of systemic transformation; they are not themselves the ultimate goal.

Second, it is this different paradigm regarding humans' relationship to Nature that most distinguishes RoN legal provisions from conventional environmental law. Many environmental lawyers note that much law recognizes ecosystems as complex systems rather than individual stocks of resources, and that it thus is meant to protect healthy ecosystem functioning and promote restoration when damaged. They argue that RoN legal provisions do not add anything new and are unnecessary (for critiques by environmental lawyers, see Houck 2017). This may be true in a narrow sense, but RoN advocates argue that environmental law has proven ineffective at stopping the widespread destruction of ecosystems (indeed, it often legalizes it) precisely because it is based on a paradigm that is out of sync with the laws governing the natural world. Environmental law views ecosystems (and all their nonhuman elements) as legal objects (property). Moreover, it is embedded in legal systems that privilege property rights (including the right to destroy one's property) and socioeconomic systems that prioritize limitless economic growth despite finite natural resources. By failing to recognize ecosystem's rights, conventional environmental law places environmental interests "in a conceptual hole," perceiving legal disputes "as a conflict between two (often imbalanced) human interests," thereby leaving "the most fundamental interest" missing (Houck 2017, 26).

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Third, because this book is in part a study of efforts to change societal norms underlying sustainable development, it is important to distinguish between the Earth Jurisprudence norm and the RoN norm. As discussed above, the Earth Jurisprudence norm says human systems should be constructed to coincide with the natural laws governing ecosystem functioning. The RoN norm says that ecosystems should be recognized as legal subjects with rights and legal standing, and that Nature's rights should be incorporated into a broader rights framework for governing the planet sustainably. These are related—but distinct—norms. As we show in this book, they are often combined, but sometimes not. The book examines how different constructions of RoN legal provisions are shaping normative debates about what RoN is, how it should be implemented, and the implications for sustainable development.

We argue that the transformative power of RoN laws lies in their ability to insert Earth Jurisprudence throughout human legal, socioeconomic, and governance systems. RoN laws that do this set the stage for transformational change toward systems in harmony with Nature. When RoN laws are stripped of Earth Jurisprudence normative content, they can be counterproductive to the goals of the RoN movement.

THE ORIGIN OF EARTH JURISPRUDENCE AND RIGHTS OF NATURE NORMS

The normative foundations of Earth Jurisprudence and RoN have developed independently over centuries in both Western and non-Western cultures and have been discussed by writers on every continent. In Western societies the idea of extending rights to Nature emerged gradually within the field of environmental ethics (Nash 1989). In 1972, US lawyer Christopher Stone (1972) argued that natural ecosystems should have rights in courts of law, drawing from previous legal developments that had expanded the community of rights holders to include children, former slaves, endangered species, and various minorities. In the 1990s and early 2000s, scholars like Thomas Berry (1999) and Cormac Cullinan (2011b) developed ideas circulating within environmental ethics and legal communities into a coherent Earth Jurisprudence paradigm. Scholars from

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around the globe subsequently developed the normative foundations of what we now call Earth Jurisprudence, or the RoN approach.[2]

Earth Jurisprudence scholars acknowledge, however, that this paradigm is not really new. It is informed not only by ecological science and environmental ethics, but also Indigenous knowledge and cultural systems dating back millennia (Berry 1999; Iorns Magallanes and Sheehan 2017, 74). Catherine Iorns Magallanes (2014, 182) notes that originally all human societies were based on hunting and gathering, so they had a keen awareness that they depended on the ecosystems where they lived. To survive, early societies had to develop extensive knowledge about local ecosystems, and they developed complex governance systems and social rules designed to ensure that their communities lived according to the natural laws governing how those ecosystems functioned. Societies that failed to do this typically perished. Often these social rules were reinforced by "spiritual or religious beliefs linking humans to their environment and venerating Nature" (Iorns Magallanes 2014, 182).

The invention of agriculture and domestication of animals prompted a cultural shift in how some societies constructed humans' relationship with Nature, leading them to see humans as separate from Nature and adopting the three destructive ideas discussed above (Oelshlaeger 1991). The law shifted further during the scientific revolution and industrialization. But some societies maintained their original construction of the human-Nature relationship. Today, people typically call these Indigenous societies.

While the concept of rights is foreign to many Indigenous cultures, this compatibility in worldview between Earth Jurisprudence and many Indigenous cosmologies prompted some Indigenous groups to endorse a RoN approach. Indeed, Indigenous peoples have been a leading force in the global RoN movement. In 2016, the Ponca Nation of Oklahoma became the first in the United States to recognize RoN in tribal law as a strategy for stopping fossil fuel projects near tribal land. As Casey Camp-Horinek, a Ponca leader who led the effort, notes, "In passing the RoN into Ponca tribal law, for the first time we saw our Indigenous values and rights reflected in Western law. We are not people protecting Nature, we are Nature protecting itself. This is a powerful way to create system change."[3]

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Camp-Horinek's comments are consistent with those of other Indigenous leaders who talk about RoN as a way to make Western paradigms be more consistent with the cosmology traditionally held by their peoples, which often overlap with Earth Jurisprudence philosophy (Goldtooth 2017; Pacari 2009). According to Ecuadorian Indigenous leader and former Minister of Foreign Affairs Nina Pacari (2009, 35), the Indigenous *cosmovisión* that surrounds the concept of *buen vivir* (good living) and RoN in the 2008 Constitution of the Republic of Ecuador and in Bolivian laws is a natural outgrowth of the relationship of humans to Mother Earth.[4]

THE POLITICS OF RIGHTS OF NATURE

Reforming legal, governance, and economic systems to conform to the principles of Earth Jurisprudence would entail significant transformations to these systems. "Zero-growth" economic systems, designed by ecological economists, would keep consumption levels within the carrying capacity of ecosystems (Farley 2012). Energy systems would be transformed to rely on 100 percent renewable sources. Agricultural systems would be transformed to restore organic matter to soil rather than starving soil through a reliance on chemical fertilizers. Governance systems would be transformed to manage ecosystems in an integrated fashion. Legal systems would be transformed to prohibit activities that would destroy ecosystems' ability to function, and would require ecosystems to be restored when damaged, so that humans and other species can continue to benefit from them.

This kind of structural, transformative change inevitably produces opposition by those with vested interests in the status quo. Increasingly, communities' efforts to protect the ecosystems on which they depend put them into conflict with corporations and governments that overexploit natural resources for economic gain (Broad and Cavanaugh 2020). Over the last decade, hundreds of people have been killed for defending local ecosystems, "often, it appears, with direct or indirect government involvement" (Sheehan and Wilson 2015, 33). Many more are sued in court, harassed, attacked, and imprisoned. A UN report blames this "disturbing trend" on "intensified competition for natural resources over the last decades," noting that "in a globalized world, the quest for economic

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growth has resulted in a neo-colonial environment that exacerbates conflicts between communities and business actors" (United Nations General Assembly 2016, 5, 24). This book uses RoN laws as a lens for examining the politics of system transformation in the face of extreme environmental crises.

THE GOALS OF THIS BOOK

We examine the politics of RoN by addressing four sets of questions. First, why did RoN laws suddenly emerge in different countries from 2006 through 2020? RoN and Earth Jurisprudence have existed as ideas for decades, if not centuries, in both Western and non-Western societies. But until 2006, RoN remained just a philosophy discussed by people on the margins of law and policy. What explains the timing of RoN's rise as a salient international norm and its institutionalization through law and policy?

Second, the emergence of RoN laws reflecting the Earth Jurisprudence norm is surprising because they challenge dominant development norms held by powerful Western countries and economic interests. Consequently, they provide an interesting case for studying norm emergence and contestation, as well as successful strategies for framing RoN laws and institutionalizing them. How did the world move from philosophical discussions to the recognition of RoN in nearly 140 legal provisions? What are the governance structures, pathways, and strategies that created RoN laws and increased the saliency of RoN and Earth Jurisprudence as international norms? And, what does this say about how we create a new path of sustainable development in light of the UN's 2030 Agenda?

Third, the first countries to adopt RoN legal provisions did so in rapid succession (the United States in 2006; Ecuador in 2008; Bolivia in 2010; and New Zealand in 2012).[5] The common timing and normative underpinnings of early RoN legal provisions suggest that policy and norm diffusion are at work. Yet early RoN laws differ in key ways, including their definition of Nature, the rights granted, enforcement provisions, and their institutional structure. This variation contradicts predominant models of policy and norm diffusion, which predict policy convergence (Berry and Berry 2007). In fact, there are numerous reasons, discussed in this book, for why predominant models of norm diffusion cannot account for either

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the origin of early RoN laws or the differences in their content and design. Why do early RoN laws look so different from each other, and how do these competing RoN constructions impact international norm contestation over how to define and implement RoN and sustainable development?

Fourth, RoN laws are challenged once adopted. Why are RoN legal provisions upheld and implemented in some cases but not others? What are the main obstacles to implementing RoN laws, and what strategies are being employed to overcome these obstacles?

By answering these questions this book addresses policy debates over how to construct a new sustainable development paradigm capable of achieving the UN 2030 Sustainable Development Goals (developed in 2012 at the United Nations Conference on Sustainable Development and passed by the UN General Assembly in 2015) in harmony with Nature. It reveals the multiple pathways and strategies for implementing Earth Jurisprudence, analyzes new governance institutions forging these pathways, and shows how structure and strategy interact to produce success or failure.

From a theoretical standpoint, the book contributes to the norm construction literature by showing how distinct processes of norm construction in different countries imbue RoN with different content, fueling international contestation. This book adds to the growing body of literature that challenges conventional portrayals of norm diffusion characterized by unidirectional flows of influence, whether from international to local, North to South, or South to South (Jinnah 2017; Job and Shesternina 2014; Picq 2018a). It shows how norm construction occurs simultaneously at the domestic and international levels, with influence moving in multiple directions. Moreover, it shows how these norm construction and diffusion processes are producing transformational changes in the legal structures of communities around the globe in order to change the way they practice sustainable development.

OUR RESEARCH DESIGN AND METHODOLOGY

To answer the above research questions, we compare successful and failed attempts to implement Earth Jurisprudence at various levels of government in six different countries: Bolivia, Colombia, Ecuador, India, New

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Zealand, and the US. We examine these countries because they not only vary in terms of their level of economic development, political and legal systems, demographics, geography, and culture but also because they include places where RoN has been implemented the most and places where attempts at implementation have been less successful. They also allow for a series of comparisons of stronger and weaker cases (e.g., Bolivia versus Ecuador; India versus New Zealand; Grant Township, Pennsylvania, versus Santa Monica, California), providing us greater analytical leverage. Together these cases illustrate the evolution of RoN as both a norm and legal strategy through experimentation and adaptation within distinct institutional environments.

Each case study includes process tracing that weaves together rich narratives and brings to life the stories of individual communities and ecosystems in their own words. Our case studies are based on hundreds of interviews and on-the-ground observation conducted over several years of fieldwork in Bolivia (2017); Ecuador (2014–2015, 2018–2019); India (2017); New Zealand (2016, 2019) and the United States (2014–2019). We conducted additional interviews by phone and at international conferences. We also gathered hundreds of primary documents from government archives, including court documents related to lawsuits, as well as from the archives of organizations who fought to implement RoN and also those who fought against such laws. Using this information we employ comparative historical analysis and process tracing to identify key factors that caused domestic norm construction processes to evolve along distinct paths, producing distinct institutional expressions of RoN and varying levels of implementation.

The book also examines the politics of RoN at the international level. We use social network analysis to study the structure of transnational RoN networks and how this has shaped both the diffusion of rival RoN models and the global debates over sustainable development. Our analysis highlights the importance of interactions between actors at the international and domestic levels. Transnational networks like the Ecological Law and Governance Association, the Global Alliance for the Rights of Nature, and the UN's Harmony with Nature Programme link domestic actors with international institutional leaders, enhancing their ability to promote change at both levels simultaneously.

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Using our original data set of transnational RoN network ties developed through a global survey of RoN organizations, we conduct social network analysis in chapter 2 to understand the structure of global RoN networks and how it shapes the flow of ideas and resources across these network ties, as well as the power relations among organizations. From this we compare how various network activation strategies are employed by different actors in domestic and international policy arenas. This analysis is supported by participant observation research we conducted at UN meetings,[6] international RoN tribunals, and other global, national, and local activists' network strategy sessions.

COMPARING RIGHTS OF NATURE LAWS: TWO MODELS

While norm entrepreneurs were building the foundations of a global Earth Jurisprudence norm in the early 2000s (see chapter 2), domestic processes were already underway that would give rise to the first RoN laws.[7] The world's first RoN law was a municipal ordinance adopted in Tamaqua Borough, Pennsylvania, in 2006. In 2008, Ecuador recognized RoN in its constitution, and Bolivia passed a national law recognizing RoN in 2010. In 2012, the New Zealand government reached a treaty settlement with the Māori Tuhoe iwi that recognized RoN (adopted as an act of the New Zealand Parliament in 2014).

These early RoN laws share many features reflecting both RoN and Earth Jurisprudence norms but, as we show in chapter 3, they were created through mostly independent processes. To illustrate this, chapter 3 compares the processes producing RoN laws in the United States, Ecuador, and New Zealand. Because these laws were produced through independent processes in distinct domestic environments, they vary in important ways that shape how RoN is practiced and thus constructed. They answer key normative questions differently, such as which elements of Nature have rights, what rights should be recognized, who can speak for Nature, and whether someone should be obligated to protect Nature's rights.

To compare RoN laws (and thus the normative construction of RoN), we developed a framework that analyzes RoN laws along two conceptual axes: scope and strength (see chapter 3). *Scope* refers to the range of rights afforded and how broadly these rights are applied; this has

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normative implications regarding how Nature is conceptualized and defined in practice. *Strength* refers to enforcement capacity expressed through laws' formal authority and individuals' capacity and responsibility to enforce Nature's rights. Chapter 3 presents this framework in detail, comparing the laws in the United States, Ecuador, and New Zealand along these two conceptual axes and explaining the origin of their distinct structures.

From our comparison of these and other cases, we identify two ideal models of how RoN legal provisions are constructed (see table 1.1). The Nature's rights model is illustrated by RoN laws in Bolivia, Ecuador, and the United States. Here, rights-bearing Nature is defined extremely broadly: all of Nature (within the legal jurisdiction) is recognized as having rights. Most important, these laws recognize unique substantive rights, including the right to exist, to maintain the functioning of ecosystem cycles, and to be restored when damaged, among others. Procedurally, these laws empower any person to speak for Nature, but doing so is voluntary; no person is obligated to so speak. Consequently, the model tends to address RoN reactively, with people seeking to defend Nature's rights in court when violations are imminent or have occurred.

We call the second model the legal personhood model, and it is illustrated by legal provisions in Colombia, India, and New Zealand, among other places. In this model, particular ecosystems are recognized as legal

Table 1.1 Two models for structuring Rights of Nature laws

The Nature's Rights Model (e.g., Bolivia, Ecuador, and the United States)	**The Legal Personhood Model (e.g., Colombia, India, and New Zealand)**
All Nature (within legal jurisdiction) has rights	Rights of a particular ecosystem are recognized
Unique rights for ecosystems are recognized	Human rights (legal personhood) are extended to ecosystems
Anyone can speak for Nature, but is not obliged to	Specific guardians are obliged to represent the ecosystem at all times
RoN is protected when violations are reported and upheld (reactive)	Guardians are embedded in integrated ecosystem management institutions; RoN is reflected in decision making (proactive)

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persons (rather than recognizing rights for all of Nature). Most important, legal personhood does not recognize unique substantive rights for ecosystems but merely extends human rights to them.[8] Legal personhood grants ecosystems the same rights and liabilities held by all legal persons (e.g., people and corporations), including the right to own property, incur debts, petition the courts and administrative agencies, and receive reparations for damages should a court rule in their favor. These laws do not guarantee ecosystems' right to maintain their integrity or be restored. Specific guardians are, however, not only appointed to speak on behalf of an ecosystem but are obliged to do so in both legal and policy arenas. Moreover, these guardians are often embedded in new governance institutions charged with managing an ecosystem in a way that ensures its health and well-being. This gives the ecosystem a voice (via its guardians) in decision-making processes regarding its management, allowing RoN to be protected proactively, reducing the need to turn to the courts. The implications of different models will be examined throughout the book.

It is important to note that, beyond the differences in these two ideal types of models, countries vary in the legal provisions they use to recognize RoN. Ecuador recognizes RoN in its 2008 constitution. In the United States at least seventy-one legal provisions (e.g., ordinances and home rule charters) recognizing RoN have been adopted by local governments and tribal authorities. Local government ordinances and resolutions similarly exist in Argentina, Brazil, Colombia, France's Loyalty Islands, India, Italy, Mexico, and the Netherlands. Bolivia, New Zealand, and Uganda all have national laws recognizing RoN. Other cases recognize RoN through local and national court rulings (e.g., Bangladesh, Colombia, and India), regulatory policy (e.g., Santa Monica, California), and tribal law (e.g., the Ho-Chunk and Ponca Nations in the United States).

As we discuss in chapter 3, these institutional differences matter because they affect the strength of laws in terms of their ability to put RoN into practice. But the point we want to emphasize here is that these different legal provisions show the variety of pathways advocates are using to incorporate RoN and Earth Jurisprudence norms into law. Some people contest these norms in national legislatures or municipal councils, others do so through the courts, and still others work directly with bureaucrats to shape regulatory policy. These multiple pathways illustrate how the different structures

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of RoN legal provisions result from variation in the domestic factors shaping contestation over RoN in each case.

THE SIMULTANEOUS, INDEPENDENT EMERGENCE OF EARLY RIGHTS OF NATURE LAWS

Since the idea of RoN has existed for decades, why did RoN legal provisions not appear until 2006? And since RoN and Earth Jurisprudence norms were being developed internationally, why do the world's early RoN laws look so different from each other? The nearly simultaneous emergence of laws institutionalizing RoN norms in such dramatically different ways is interesting because it cannot be explained by predominant models of policy and norm diffusion (Berry and Berry 2007; Jinnah and Lindsay 2016; Krook and True 2012). These models generally seek to explain why policies look the same across countries. Norm diffusion models that tend to view norm content as "static and unitary" explain the clustering of norm adoption as the result of top-down processes by which established international norms diffuse to the local level (Krook and True 2012, 106–108). These studies cannot explain the unique construction of RoN at local levels and simultaneous norm development and adoption at global levels.

While some studies differentiate norm adoption at local levels, such as in the case of marine protected areas (Alger and Dauvergne 2017) or changes in whaling policies (Block 2008), they focus on adoption at the state level. Amitav Acharya's work on norm subsidiarity argues that local actors create rules to "preserve their autonomy from dominance" (2011, 96). This bottom-up approach provides the tools to analyze grassroots RoN developments, and especially those that challenge Western-dominated, neoliberal normative conceptions of development. Yet our analysis goes a step further by teasing out (1) how norm construction is driven by interaction among simultaneous processes of norm institutionalization at subnational, national, and global levels that include actors from Western and non-Western cultures; (2) the strategies and pathways for institutionalizing emerging counternorms; and (3) the processes through which the content of new norms evolves through contestation, experimentation, and adaptation.

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The world polity model, for example, explains countries' simultaneous adoption of similar policies and institutions due to their embeddedness in world society, which promotes cultural processes of isomorphism through identity construction, learning, and imitation. International norms are treated as "exogenous models" that are "not strongly anchored in local circumstances" (Meyer et al. 1997, 156). Norm diffusion literature explains the clustering of norm adoption as resulting from either the bandwagoning of states that imitate influential states (Finnemore and Sikkink 1998, 893) or from the pressure and persuasion exerted by transnational activist networks of norm entrepreneurs (Keck and Sikkink 1998; Stone 2019), epistemic communities (Haas 1992), states (Jinnah and Lindsay 2016), or intergovernmental organizations (Flockhart 2005).

Constructivist scholars who emphasize the role of norms in international relations focus on the state. For example, Joshua Gellers (2017) argues that new constitutional environmental rights strengthen both the role of the state in the international system and the power of norms to impact state preferences. While building on the legal rights approach, our study is different in that RoN is not an extension of the neoliberal system or simply adding another right to the human rights framework. Rather, RoN is a transformative norm that codifies a new paradigm for the world system—one that embeds human societies (and consequently states) within ecosystems. Moreover, much of the work of RoN activists takes place below and above the state level. The laws that result from their agency do not reify the state in international relations. RoN laws rooted in Earth Jurisprudence situate states within larger biotic communities that extend from species the human eye cannot see to the entire planet. They establish all members of biotic communities as subjects with rights and create obligations for the state to care for them. While RoN laws are embedded within the state system, the Earth Jurisprudence philosophy on which they are based does not neatly fit within the confines of the state, just as ecosystems do not fit neatly within political boundaries or operate according to human laws; both are universal.

Although diffusion mechanisms are evident with more recent RoN laws (e.g., in Bangladesh, Brazil, Colombia, India, Mexico, and Uganda), they were absent in the world's earliest RoN laws, established in Ecuador, New Zealand, and the United States. Chapter 3 presents our explanation for this

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puzzle, showing how early RoN laws emerged from independent processes underway in between 2006 and 2012. Some of the actors involved in each case were aware of the RoN discourse emerging internationally, yet each country's process was propelled by domestic actors with distinct motives working within distinct local contexts.

Our explanation for the simultaneous emergence of normatively similar but structurally distinct RoN laws borrows insights from convergent evolution theory in evolutionary biology, as well as research on norm construction and pragmatist theories of institution building. Convergent evolution theory argues that species from different lineages independently develop features that are functionally similar because they evolve in response to similar functional needs, but the features look different because the evolution takes place in different contexts (Conway Morris 2009, Raval et al. 2015). Likewise, we argue that functionally similar RoN laws (i.e., those reflecting common underlying principles of Earth Jurisprudence) emerged independently in response to common environmental pressures.

Part of the story is that science has evolved regarding our understanding of the natural world and the many ways ecosystems impact our quality of life—indeed, our very existence. Hence, legal norms are catching up to what scientists have been reporting for quite some time and to what Indigenous communities have known for millennia (Boyd 2017; Chapron, Epstein, and López-Bao 2019). But the sheer magnitude of environmental pressure has also changed. Intergovernmental and nongovernmental organizations have documented an increase in extreme pressure on ecosystems over the last two decades, which is causing increased conflicts between corporations seeking to exploit natural resources and communities seeking to defend the ecosystems on which they depend (Sheehan and Wilson 2015; United Nations General Assembly 2016).

In Mora County, New Mexico, for example, citizens worked with the Community Environmental Legal Defense Fund (CELDF) to pass the local Community Water Rights and Local Self-Government Ordinance in 2013 (Price 2019). This protected the community's right to clean water and healthy ecosystems over the right of hydraulic fracturing, or fracking, companies to both take and pollute their water. While the federal district court ruled in favor of the corporations, this experience helped CELDF learn and

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build new RoN legal tools to aid communities (human and natural) in their struggle against corporations seeking to use their natural environments.

Like Mora County, communities around the world have mobilized to defend their families. They quickly learn, however, that existing laws do not help them, prompting a search for new legal tools. Often these are people who do not consider themselves environmentalists and who were not previously politically active. This includes the community activists of Grant Township, Pennsylvania, who want to prevent oil companies from injecting fracking waste into their only source of drinking water. Other communities represent long active groups, such as Ecuadorian Indigenous groups and the Māori iwi in New Zealand, who experimented with new legal tools to advance long-standing struggles to protect their territorial homelands.

Increasing violent attacks on citizens defending their right to live in clean ecosystems revealed the failure of human rights norms and laws to adequately address pressures from and on the environment, which human beings depend on for survival (United Nations General Assembly 2016, 4). These pressures also highlight conflicts between human rights norms and dominant neoliberal development norms, as many significant pressures come from market dynamics that open new spaces for extraction, mining, big agriculture, and industrialization. In response, communities and governments around the world have sought to strengthen their positions by adopting new Earth-centered legal provisions that prevent extreme harm to Nature rather than merely mitigating harm (which over time legalizes extreme damage). This book focuses on one type: legal provisions recognizing RoN.

The global phenomenon of unprecedented pressure being placed on ecosystems, and the resulting conflict as communities push back, explains why multiple RoN laws emerged for the first time between 2006 and 2012 through independent processes. Facing common pressures, communities in distinct parts of the world began experimenting with new environmental laws that are functionally similar in that they share a common norm regarding humans' relationship to Nature and their responsibility toward it (i.e., Earth Jurisprudence). Yet communities constructed RoN laws differently because they resulted from independent processes of norm contestation shaped by distinct political, institutional, and cultural contexts.

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NORM CONSTRUCTION IN UNIQUE ENVIRONMENTS

To understand why the world's early RoN laws look so different from each other, we use pragmatist theories of institution building to build on recent norm construction research that examines processes of contestation, experimentation, adaptation, and learning (Krook and True 2012; Sandholtz 2008; Van Kersbergen and Verbeek 2007; Wiener 2004). As Mona Krook and Jacqui True note, "the norms that spread across the international system tend to be vague, enabling their content to be filled in many ways and thereby to be appropriated for a variety of different purposes" (2012, 104). This is consistent with pragmatist theories of institution building, which explain how institutional designs evolve through contestation, experimentation, adaptation, and learning, thus causing institutions to reflect the outcomes of experimentation in distinct contexts (Abers and Keck 2013; Berk and Galvan 2013; Kauffman 2017).

In our case comparisons, we identify three important contextual differences. First, national political opportunity structures can be relatively open or closed, influencing the type of legal provision adopted. As chapter 3 shows, windows of opportunity for strong national laws opened through the writing of a new constitution in Ecuador and New Zealand's treaty settlements with Māori iwi. By contrast, the US's closed opportunity structure required RoN advocates to pursue local ordinances with questionable legal standing.

Second, different types of organizations advocate for RoN laws to achieve distinct motivations and goals, and they develop different coalitions based on their position in larger sociopolitical alliance structures. Third, contestation is shaped by cultural context, which influences the kind of frames used to mobilize support. Together these factors shape how RoN is framed, contested, and expressed institutionally.

In the United States, environmental lawyers seeking stronger environmental laws allied with community activists seeking to challenge corporate exploitation of local ecosystems. This led RoN to be framed as an expression of community rights and a tool for strengthening democracy. In Ecuador, by contrast, coalitions of environmental movements, Indigenous movements, and leftist political movements framed RoN as a tool for achieving a post-neoliberal development model infused with Indigenous concepts.

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New Zealand's laws emerged through bargaining between Māori iwi and New Zealand's government over natural resource management. They consequently emphasize Māori understandings of ecosystems as living ancestors and the responsibility of guardianship.

These differences matter because they fuel contestation at the international level over important normative questions like what rights should be recognized for Nature, how guardianship should be constructed, and what the relationship is between RoN and human rights.

THE POLITICS OF IMPLEMENTING RIGHTS OF NATURE

Because emerging norms, like RoN, are imbued with meaning through their application in specific cases, it is important to understand how politics shapes the implementation of new RoN laws. It is one thing to draft a law recognizing RoN, but quite another to put Earth Jurisprudence into practice. In chapters 4–6 we analyze the implementation of early RoN laws in three countries: Ecuador, Bolivia, and New Zealand. We focus on these countries for three reasons: first, they are the only countries whose laws have existed long enough to evaluate implementation; second, they highlight how implementation looks different in countries that adopt the Nature's rights model (e.g., Ecuador and Bolivia) versus countries that adopt the legal personhood model (New Zealand); and third, they allow a comparison of countries where Earth Jurisprudence has strengthened through implementation (e.g., Ecuador and New Zealand) with one where implementation has been less successful (Bolivia).

The question of why RoN laws get implemented in some instances and not others has relevance for larger questions about how new norms strengthen in a society. The literature on norm emergence and development emphasizes institutionalization as an important mechanism (Finnemore and Sikkink, 1998, 900), and many studies examine how new norms get institutionalized in domestic and international laws (Carpenter, 2007; Risse, Ropp, & Sikkink, 1999; Sikkink, 2011). But in the early stages of a norm's life cycle, when the norm is highly contested, laws often are not applied in ways that support the norm. For example, the adoption of human rights laws cannot fully explain the pattern of human rights

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prosecutions. The effects of human rights laws are conditional on bottom-up legal mobilization over time (Dancy and Michel, 2016, 173). Yet few studies examine the pathways and strategies that norm entrepreneurs (and their opponents) use to build (and counter) momentum behind judicial processes meant to buttress the enforcement of emerging counternorms.

To fill this gap, we compare contestation over RoN in Ecuador (chapter 4) and Bolivia (chapter 5). Ecuador and Bolivia provide a rare opportunity to study the implementation of RoN laws in two very similar cases. Besides sharing many similarities in terms of geography, demographics, history, politics, and economic development, they are the first two countries in the world to adopt national laws recognizing Nature as a subject with rights, in Ecuador's 2008 constitution and Bolivia's 2010 Law of the Rights of Mother Earth (upgraded in 2012 as the Framework Law of Mother Earth and Integral Development for Living Well). On paper these are among the strongest RoN legal provisions in the world. The laws are extremely similar and follow the Nature's rights model, as described above. These similarities are not coincidental. Both laws grew out of simultaneous processes to rewrite constitutions propelled by new alliances between socialist and populist political groups with Indigenous movements aligned over their common desire to oust neoliberal elites and create a post-neoliberal development agenda. Despite these similarities, however, Earth Jurisprudence gradually strengthened in Ecuador over the last decade but did not do so in Bolivia.

Chapter 4 analyzes the strengthening of Earth Jurisprudence in Ecuador by comparing lawsuits invoking constitutional RoN provisions. While early court rulings failed to uphold RoN, later lawsuits succeeded, and the courts have gradually strengthened Earth Jurisprudence in Ecuadorian law. To explain this phenomenon, we analyze the pathways and strategies that RoN advocates (and their opponents) used to build (and counter) momentum behind judicial processes meant to buttress the enforcement of contested RoN norms. Ecuador's cases demonstrate how "weak" RoN laws can strengthen, providing important insight into the global contestation over sustainable development and the strategies and legal tools being used to advance a post-neoliberal development agenda rooted in harmony with Nature.

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Chapter 5 asks what happened to Bolivia. The absence of the factors explaining the strengthening of Earth Jurisprudence in Ecuador can also explain the lack of strengthening in Bolivia. This variation can largely be explained by (1) differences in how the two countries' RoN laws situate RoN in relation to competing economic rights; (2) variation in Bolivia's and Ecuador's civil society structures (particularly regarding the cohesiveness of highland and lowland Indigenous groups, the strength of environmental movements, and the presence of legal communities trained in RoN jurisprudence); and (3) each government's strategy for responding to the tension between RoN and the government's development agenda.

Chapter 6 examines what Earth Jurisprudence looks like in practice when RoN is structured according to the legal personhood model. It analyzes implementation of New Zealand's laws recognizing the Te Urewera forest as a legal person with rights. In contrast to countries that follow the Nature's rights model, implementation of Earth Jurisprudence in New Zealand has not happened through lawsuits. Rather, it has happened by creating new institutions that manage ecosystems in an integrated way according to Māori traditional knowledge and customs, which are consistent with Earth Jurisprudence. Guardianship bodies obliged to represent the interests of the ecosystems are embedded in collaborative, integrated ecosystem management bodies, giving the ecosystem a voice in the decision-making processes governing it.

MULTIPLE PATHWAYS AND THE EVOLUTION OF EARTH JURISPRUDENCE

Following the emergence of these early RoN laws, activists formed transnational networks to promote RoN in different policy arenas (see chapter 2). Consequently, there has been an explosion of RoN legal provisions that look different, in part because they emerged through distinct pathways. Relatively few countries have followed the path of Bolivia, Ecuador, and New Zealand, which adopted national RoN laws.[9] These laws were created through unique and contingent processes that opened a window of opportunity for codifying Indigenous views of humans' relationship to Nature in Western law (i.e., writing new constitutions in Bolivia and Ecuador, and treaty settlements with Māori in New Zealand). These rare

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events are not easily replicated. Yet this has not stopped the rise of RoN legal provisions around the world, which have largely emerged through pathways other than national legislatures.

One pathway common in the United States is the ballot initiative. CELDF has worked tirelessly over the last decade to train and activate a national network of community activists who are advancing ballot initiatives across the country to create local ordinances recognizing RoN. Believing that political opportunity structures in both the national and state legislatures are closed, CELDF has chosen to instead appeal directly to voters. At the time of this writing, seventy-five such ballot measures had passed, most recently one in Orange County Florida recognizing the right to clean water (Smith 2020).

Outside the United States, RoN advocates have had more success cultivating allies in national and subnational legislatures and working with them to draft RoN laws. The work of the Ugandan organization Advocates for Natural Resources and Development, supported by the Gaia Foundation and others, led Uganda's 2019 National Environment Act to recognize RoN. The Earth Law Center helped legislators in the Mexican state of Colima to draft a RoN constitutional amendment that was adopted in 2019; Mexico City had drafted one in 2017. As a result of similar efforts by RoN advocates, various municipal and state governments in Brazil, Colombia, and Mexico have recognized RoN in their constitutions or regulations.

Another pathway pursued by some Native American tribes in the United States and Canada has been to recognize RoN in tribal law as a tool for fighting against environmental degradation caused by fracking, mining, oil transport, and industrial agriculture. By January 2021, eight tribes— the ?Esdilagh First Nation of Canada, the Ho-Chunk Nation, the Menominee Tribe, the Navajo Nation, the Nez Perce Tribe, the Ponca Nation, the White Earth Band of Ojibwe, and the Yurok Tribe—recognized RoN in their constitutions or tribal law.

An alternative to working with legislatures is to activate networks of executive branch bureaucrats with the authority to recognize RoN in public policy, even without creating a new law. For example, lawyers from the Earth Law Center worked with city officials in Santa Monica, California, on Earth Jurisprudence and its applications, leading them to incorporate RoN into Santa Monica's Sustainable City Plan. The Australian Earth

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Law Alliance similarly works with local officials in Australia to incorporate RoN into policy. In Ecuador, environmental lawyer Hugo Echeverria trained Galapagos National Park guards, judges, and provincial officials on RoN and its applications to species protections.

The courts offer yet another pathway and illustrate the power of training judges in Earth Jurisprudence. Since 2016, a number of courts have issued rulings recognizing RoN even though their countries have no laws explicitly recognizing it. For example, the Constitutional Court of Colombia recognized the Atrato River as a legal person with rights, while the Supreme Court of Justice of Colombia did the same for the Amazon rain forest. Bangladesh's Supreme Court similarly recognized the rights of the Turag River. Courts in India have recognized the Ganga (or Ganges) and Yamuna Rivers, the Himalayan mountains and glaciers, and the watersheds these glaciers feed as legal persons with rights.

Chapters 7 and 8 analyze how RoN advocates have experimented with these and other pathways in response to obstacles presented by opponents of RoN. The chapters show that RoN is being implemented through these multiple pathways and examine the changing strategies advocates and opponents use as RoN is contested and constructed. Moreover, the chapters show how this contestation fuels experimentation and adaptation with hybrid RoN legal provisions that combine elements of the Nature's rights and legal personhood models. Chapter 7 focuses on experimentation and adaptation with the Nature's rights model through local governments, while Chapter 8 examines adaptation of the legal personhood model through the courts.

The rise of different types of RoN legal provisions through multiple pathways is important because it produces an evolution in the legal principles underlying RoN and, consequently, the global RoN norm. This is particularly true of RoN legal provisions developed by the courts. When countries lack laws recognizing RoN, judges must strategically interpret existing laws to justify it. This has caused the legal doctrines supporting RoN to evolve. Chapter 8 explores the effects of RoN court rulings on normative questions: What is the relationship between RoN and human rights, including Indigenous rights? Do ecosystems or their guardians have liabilities as well as rights? What is the relationship between ecosystems and their human guardians?

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In the book's Conclusion, we address several current debates that have emerged from experimentation with RoN. We also evaluate Earth Jurisprudence's ability to serve as a legal pathway and foundation for implementing the UN's 2030 Agenda and 2030 Sustainable Development Goals. Throughout this book, we examine the struggles, cases, policies, ordinances, and new governing bodies that institutionalize RoN and embed it in new ways of living, thinking, acting, and governing. Given the urgency of the present climate and biodiversity crises and the need to transform our ways of living, we offer a hopeful account of one way to craft a new international relations capable of allowing all living beings on the planet to flourish and regenerate now and into the future.

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2

NETWORK AND NORM CONSTRUCTION AT THE GLOBAL LEVEL

Early Rights of Nature (RoN) laws in Bolivia, Ecuador, and New Zealand—and, to a lesser extent, local laws in the United States—provided a "proof of concept" that RoN was possible and showed what it might look like in practice. This inspired the formation of transnational networks, like the Global Alliance for the Rights of Nature (GARN), and new global governance institutions like the United Nations (UN) Harmony with Nature Programme, dedicated to implementing Earth jurisprudence in domestic and international law in order to transition to a more ecologically sustainable way of life. These overlapping networks and institutions constitute a global governance system for advancing the Earth jurisprudence paradigm and putting it into practice. This chapter traces the rise of this global system and examines how it is altering international norm contests regarding how sustainable development should be conceptualized and practiced.

The strength of this networked governance system is that it combines the particular resources, skills, and authority of many different kinds of organizations and directs these to simultaneously promote system change in all different kinds of policy arenas at every level of governance (local, national, and international). Some organizations work with local communities to advance local RoN laws. For example, the Community Environmental Legal Defense Fund (CELDF) holds its Democracy Schools to train citizens across the United States in Earth jurisprudence and to

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mobilize citizens to launch ballot initiatives to pass municipal ordinances recognizing RoN. The Gaia Foundation similarly trains civil society and community leaders in Africa, and the Earth Law Center and others work with local and national governments around the world to draft RoN laws. The Australian Earth Laws Alliance, Earth Law Center, and other organizations train lawyers and judges to advance RoN through the courts. Other groups, like Movement Rights and the Indigenous Environmental Action Network, promote RoN among Indigenous and other grassroots activists. The Scottish organization Nature's Rights is working to incorporate RoN into the European Union system. Linda Sheehan, the former lead council for the Leonardo DiCaprio Foundation (and former director of the Earth Law Center), has played a key role in bringing philanthropic organizations into the RoN movement. The Center for Democratic and Environmental Rights, the Ecological Law and Governance Association, and other organizations hold regular webinars to raise public awareness. End Ecocide on Earth and others are working to amend the Rome Statute to add ecocide (i.e., serious violations of RoN) to the list of crimes that could be brought to the International Criminal Court, and various organizations are working to strengthen RoN within the UN system.

GLOBAL EXPANSION OF RIGHTS OF NATURE LEGAL PROVISIONS

One motivation for studying transnational RoN networks is to understand the global governance structures propelling a dramatic increase in RoN legal provisions worldwide in recent years. To understand the full scope of the expansion, we constructed an original database of RoN legal provisions (i.e., laws, court rulings, and regulatory policies recognizing RoN). As of January 2021, we documented 178 existing RoN legal provisions worldwide. These only include adopted laws and court rulings recognizing RoN; they do not include failed attempts to establish laws, laws that were later overturned, or lawsuits in which court rulings did not favor RoN. We also identified an additional thirty-seven pending cases (i.e., proposed RoN laws and lawsuits invoking RoN whose outcomes are not yet determined). Consequently, there were 215 existing and pending RoN legal provisions as of January 2021.

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Table 2.1 shows the number of RoN legal provisions that were adopted each year, as well as the cumulative number of countries where provisions had either been adopted or were under consideration. We include countries considering RoN because we believe this provides a clearer picture of trends regarding efforts to implement it, which in turn provides an indication of the results of network expansion and mobilization discussed in this chapter. The data show a significant expansion in the number of countries recognizing or considering RoN legal provisions, as well as the number of provisions actually adopted, between 2017 and 2020.

Before 2013, all of the legal provisions occurred within three countries: Bolivia, Ecuador, and the United States. Growth in the number of legal provisions mainly reflects new local ordinances recognizing RoN

Table 2.1 Expansion of Rights of Nature legal provisions, 2006–2020

Year	Number of RoN Legal Provisions Adopted each year	Cumulative Number of Countries Adopting or Considering RoN Legal Provisions
2006	7	1
2007	4	1
2008	10	2
2009	6	2
2010	6	3
2011	11	3
2012	12	3
2013	13	4
2014	13	6
2015	11	9
2016	8	10
2017	11	12
2018	19	13
2019	32	23
2020	15 (with 16 more pending)	27

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in the United States (as a result of the expansion of CELDF's network discussed herein) and the strengthening of RoN jurisprudence in Ecuador through the courts (i.e., judges increasingly applying RoN in their rulings). In 2013 and 2014 we see the addition of three more countries with RoN legal provisions: Mexico, New Zealand, and the United Kingdom. In 2016, Argentina, Brazil, Colombia, and France (Loyalty Islands) are added to the list. But between 2017 and 2020 the number of countries where RoN legal provisions were adopted or pending decisions nearly tripled to twenty-seven. The number of RoN legal provisions adopted in many of these countries similarly grew significantly.

We believe that this dramatic increase reflects the strengthening of transnational RoN networks following a decade of network activation and mobilization. We describe this network activation below and map transnational RoN networks as they existed in late 2019. Our network analysis in 2019 admittedly is just a snapshot in time, but it provides the best available image of the informal global governance networks that existed at the time when RoN legal provisions were dramatically expanding around the globe. To place this network data in context, we first describe how these networks were formed and expanded over time, as well as their efforts to establish Earth jurisprudence as a salient counternorm in international discussions surrounding sustainable development.

CONSTRUCTING A GLOBAL RIGHTS OF NATURE NETWORK AND NORM

Global networks to develop and promote Earth jurisprudence as a tool for creating a more ecologically sustainable approach to development began forming in the 1990s, initially around Indigenous movements in the western hemisphere mobilizing to protect Earth from industrial mining and oil extraction (Becker 2011; Martin 2003; Van Cott 2008). Meanwhile, the London-based Gaia Foundation was inspired by the writings of Thomas Berry and collaborated with him to hold the first international conference on Earth jurisprudence in 2001. The conference convened lawyers, environmental leaders, educators from South Africa and the United States, and Indigenous peoples in the Canadian Arctic and the Colombian Amazon (Bell 2001).

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Over the next several years, the Gaia Foundation facilitated numerous workshops that brought together thinkers and advocates from Africa, Asia, Europe, and North and South America. These meetings produced the Earth Justice Network, a community of activists working to develop a common understanding of a new, Earth-centered legal paradigm (Cullinan 2011, 15). Declarations laying out normative foundations emerged, including the Arlie and Botswana Principles of Earth Jurisprudence, in 2001 and 2003, respectively (Gaia Foundation, n.d.-b). Throughout the early 2000s, institutions and centers for Earth jurisprudence formed in Australia, Botswana, Brazil, Kenya, South Africa, the UK, the United States, and elsewhere. The ideas about Earth jurisprudence circulating internationally provided fodder for communities searching for new ways to address their local problems. While chapter 3 describes the independent origins of the first RoN laws, we focus here on how the adoption of early RoN laws energized subsequent transnational organizing.

After RoN was recognized in the 2008 Constitution of the Republic of Ecuador, transnational organizing around RoN began to intersect more directly with state-led international relations. Specifically, activists mobilized behind RoN as a response to states' failure to take adequate measures to combat climate change and pursue ecologically sustainable development. After the 2009 UN Copenhagen Climate Change Conference failed to produce a binding agreement, Bolivian president Evo Morales convened the World People's Conference on Climate Change and the Rights of Mother Earth, held in Cochabamba, Bolivia, in April 2010. The three-day conference, which was attended by over thirty-five thousand people from 140 nations, developed seventeen proposals for addressing climate change, summarized in the People's Agreement. One group, led by Cormac Cullinan, a South African lawyer who had participated in the workshops on Earth jurisprudence organized by Thomas Berry and the Gaia Foundation, drafted the Universal Declaration of the Rights of Mother Earth (Global Alliance for the Rights of Nature 2010).

The Universal Declaration remains a key expression of the emerging global Earth jurisprudence norm that advocates argue should guide policy on climate change and sustainable development. The declaration's language mirrors the language in Ecuador's 2008 constitution, which was at that time the only existing national RoN law. The description of

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Earth reflects the Andean Indigenous worldview of Nature as Pachamama (Mother Earth), the "source of life" and "well-being" (Republic of Ecuador 2008; Global Alliance for the Rights of Nature 2010, preamble). The list of rights recognized include Nature's right to exist; to be respected; to regenerate its vital cycles and processes; to maintain its integrity as a distinct, self-regulating interrelated being; and to not have its genetic structure modified in a manner that threatens its integrity or healthy functioning (Article 2). The preamble affirms that defending these rights is necessary to guarantee human rights. Failing to do so puts "life as we know it today at risk through phenomena like climate change" (Global Alliance for the Rights of Nature 2010).

Like all norms, RoN dictates what humans *should* do, reflected in article 3, "Obligations of Human Beings to Mother Earth." Among other things, this section states that people, states, and private institutions have the obligation to recognize and enforce Nature's rights, ensure that the pursuit of human well-being contributes to the well-being of natural ecosystems, protect and restore the integrity of vital ecological cycles, and "establish precautionary and restrictive measures to prevent human activities from causing species extinction, the destruction of ecosystems or the disruption of ecological cycles" (Global Alliance for the Rights of Nature 2010).

Seeking to build on the momentum provided by Ecuador's 2008 constitution and the 2010 Universal Declaration, RoN activists from around the world gathered in Ecuador in September 2010 for their first international conference. At the meeting, participants founded GARN, a network that connects Indigenous movements, environmental and human rights activists, community rights activists, lawyers, scientists, business leaders, and government leaders from over one hundred countries. GARN frames its purpose as creating "a system of jurisprudence that sees and treats nature as a fundamental, rights bearing entity and not as mere property to be exploited at will. Breaking out of the human-centered limitations of our current legal systems by recognizing, respecting and enforcing Rights of Nature is one of the most transformative and highly leveraged actions that humanity can take to create a sustainable future for all" (Global Alliance for the Rights of Nature, n.d.-a).

GARN seeks to transform the paradigms and legal systems undergirding sustainable development policy by activating networks of people working

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to incorporate RoN into law and policy at all levels of governance around the world. The alliance's website reveals this strategy for paradigm change through network activation, which is divided among working groups that range from youth mobilization to promoting Indigenous and ancestral knowledge, as well as international advocacy. By "driving Rights of Nature into law like Ecuador did in its 2008 National Constitution," the alliance seeks "to reproduce this concept virally through the world, invading systems of thought and juridical systems" (Global Alliance for the Rights of Nature, n.d.-b).

NETWORK AND NORM CONSTRUCTION IN INTERNATIONAL INSTITUTIONS

RoN activists mobilized at the 2012 UN Conference on Sustainable Development in Rio de Janeiro (Rio+20), where GARN and partner Global Exchange hosted a panel advocating for RoN as "the foundation of sustainability" (GARN n.d.-c). Sympathetic governments, led by Bolivia and Ecuador, pushed to incorporate RoN into the discussion at the Rio+20 conference. Ecuador had laid the groundwork the previous February, when environment ministers from the Community of Latin American and Caribbean States (Comunidad de Estados Latinoamericanos y Caribeños, or CELAC) met in Quito, Ecuador, to develop a common platform in advance of the Rio+20 summit. At Ecuador's urging, CELAC members committed "to discussing [at the Rio+20 summit] a universal declaration of the rights of nature as an instrument for achieving [sustainable development]" (Comunidad de Estados Latinoamericanos y Caribeños 2012, 4).[1]

At the summit, Bolivia, Costa Rica, Ecuador, and Paraguay together called for the UN to include RoN in the final resolution. While this did not occur, Ecuadorian delegates did place RoN and Earth jurisprudence within the agreed-upon outcomes by insisting on the inclusion of what would become articles 39–40 in the resolution (as chapter 1 discussed, "harmony with Nature" has become a catchphrase referring to Earth jurisprudence):

39. We recognize that the planet Earth and its ecosystems are our home and that Mother Earth is a common expression in a number of countries and regions and we note that some countries recognize the rights of nature

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> in the context of the promotion of sustainable development. We are convinced that in order to achieve a just balance among the economic, social and environment needs of present and future generations, it is necessary to promote harmony with nature.
>
> 40. We call for holistic and integrated approaches to sustainable development which will guide humanity to live in harmony with nature and lead to efforts to restore the health and integrity of the Earth's ecosystem. (United Nations General Assembly 2012b)

In addition to leading the campaign for the UN to adopt a Universal Declaration of the Rights of Nature, the Bolivian and Ecuadorian governments helped establish the Harmony with Nature Programme within the Division for Sustainable Development of the UN Department of Economic and Social Affairs. The UN Harmony with Nature Programme provides an institutional basis for promoting RoN, and Earth jurisprudence more generally, within the UN system, and it has become a central node in the global RoN network.

Each year since 2011, on International Mother Earth Day, the program has organized intergovernmental dialogues in the UN General Assembly on how to implement Earth-centered principles for sustainable development in harmony with Nature (i.e., Earth jurisprudence), particularly through RoN. The program invites scholars, scientists, and leaders of member states to report on the "evolving relationship of humankind with Nature" (United Nations General Assembly 2012a, 1). In the 2012 dialogue, participants recognized Bolivia's and Ecuador's national and constitutional RoN laws as an inspiration and emphasized "humanity's responsibility to restore the health and integrity of the Earth system" (United Nations General Assembly 2012a, 3). These dialogues also acknowledge scientific findings that recognize the complex and interdependent relationships among species and all within the natural world, highlighting the need for a more "holistic" view of the Earth (United Nations General Assembly 2012a, 8). Through this lens, participants frequently advocate transforming systems to ones in which "the rule of law, science and economics would be grounded in concern for the Earth"—that is, based on Earth jurisprudence (United Nations General Assembly 2012a, 10).

One effect of this program has been to produce annual UN General Assembly Resolutions and Secretary General reports that help construct and strengthen global Earth jurisprudence and RoN norms. The catchphrase

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"living in harmony with Nature," now common in UN documents, is meant to challenge dominant development norms by prioritizing balance and the functioning of natural ecosystems over perpetual economic growth. This challenge is illustrated by a 2013 report issued by then UN secretary-general Ban Ki-moon, who criticized perpetual economic growth and made a normative argument for creating a new development paradigm based on ecological economics and RoN. According to the report, constructing this new paradigm requires "that people do not assume that they have unlimited resources or means. . . . Harmony with Nature also calls for . . . the concept of holism, and for its relevance as a factor in the pursuit of a lifestyle that respects the rights of Nature" (United Nations General Assembly 2013, 26–27).

In September 2015 the UN General Assembly passed Resolution 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development* (United Nations General Assembly 2015b). Pope Francis's remarks at the opening day of the World Summit to adopt the 2030 Agenda illustrate the degree to which RoN has infiltrated global debates over sustainable development. The pope invoked Earth jurisprudence to critique the dominant, anthropocentric, economic development approach and to advocate RoN as an urgent and necessary solution to poverty and climate change. Criticizing the "oppressive lending systems" of international financial agencies and the "selfish and boundless thirst for power and material prosperity," Pope Francis (2015b) stated, "First, it must be stated that a true 'right of the environment' does exist, for two reasons. First, because we human beings are part of the environment. We live in communion with it, since the environment itself entails ethical limits which human activity must acknowledge and respect. . . . Second, because every creature, particularly a living creature, has an intrinsic value, in its existence, its life, its beauty and its interdependence with other creatures."

Two months later, in December 2015, the UN General Assembly adopted a resolution (A/RES/70/208) calling for the creation of a knowledge network on Harmony with Nature comprising Earth jurisprudence experts from various disciplines and countries around the world. The Harmony with Nature Knowledge Network was formed in 2016 to advise governments and the general public on how Earth jurisprudence could be applied to achieve the 2030 Agenda's goals. Its work is supported by an online platform hosted

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by the UN Harmony with Nature Programme (United Nations Harmony with Nature Programme. n.d.-b). Each year on Mother Earth Day, members of the network participate in an interactive dialogue with the UN General Assembly on how Earth jurisprudence can be employed to meet one of the seventeen goals. The Harmony with Nature Knowledge Network currently connects 151 experts from every continent and is a leading node in the global RoN network.

GLOBAL NORM CONSTRUCTION THROUGH CITIZEN TRIBUNALS

To facilitate their efforts at global RoN norm construction, RoN advocates created a new international governing institution: the International Tribunal for the Rights of Nature. This is not a formal court, but a "people's tribunal" that investigates, tries, and decides cases involving alleged violations of the Universal Declaration of the Rights of Mother Earth, adopted at the World People's Conference on Climate Change and the Rights of Mother Earth in Bolivia (Global Alliance for the Rights of Nature 2010). The purpose is to educate people about what RoN would look like in practice if it were incorporated into formal legal systems; the idea is to make it seem less abstract, more realistic, and consequently less scary, thereby helping to build normative support and political pressure.

The tribunal draws on a strategy used to construct global human rights norms. Proposed by Alberto Acosta, former President of Ecuador's Constituent Assembly, it was inspired by the International War Crimes Tribunal and the Permanent Peoples' Tribunal, established by citizens in the 1960s and 1970s, respectively, to investigate and publicize human rights violations.[2] Just as these tribunals provided social pressure to create and strengthen international human rights law, the International Tribunal for the Rights of Nature is meant to foster international RoN law. While the tribunal's decisions do not carry the force of formal law, they serve several purposes, articulated in article 2 of its constitution:

The Tribunal is established:

(a) to investigate, hear and decide cases involving alleged violations of the Earth Rights Declaration;

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(b) to further develop Earth jurisprudence by writing and disseminating judgements that interpret the Earth Rights Declaration and apply the rights and obligations in it to the specific facts of the cases which it hears;
(c) to promote both universal acceptance among the peoples of the world that they have a duty to respect the intrinsic rights of all natural beings, and universal observance of the rights and duties contained in the Earth Rights Declaration; and
(d) to demonstrate how the application of the rights and duties in the Earth Rights Declaration promote the harmonious co-existence of humans and other beings in a manner that enhances the integrity, health and functioning of the whole Earth community. (Global Alliance for the Rights of Nature 2015)

The tribunal is organized by GARN, coordinated by Natalia Greene, who is also the president of the national coordinating entity for environmental nongovernmental organizations (NGOs) in Ecuador, the Ecuadorian Coordinator of Organizations for the Defense of Nature and the Environment (Coordinadora Ecuatoriana de Organizaciones para la Defensa de la Naturaleza y el Medio Ambiente, or CEDENMA). While organized by GARN, the tribunal unites various RoN network members, such as the Earth Law Center, End Ecocide on Earth, Movement Rights, the Women's Earth and Climate Action Network (WECAN), various Indigenous organizations (such as the Indigenous Environmental Network and the Ponca Nation in the United States), and many other legal scholars and activists. Individual tribunals, which began in 2014, take place in international settings, typically at the Conferences of the Parties (COPs) to the UN Framework Convention on Climate Change, and have been held five times: in Quito, Ecuador (January 2014); Lima, Peru (December 2014); Paris, France (2016, in conjunction with COP 21); Bonn, Germany (2017, in conjunction with COP 23), and Santiago, Chile (2019, in conjunction with COP 25).

Regional RoN tribunals have also been held in Otavalo, Ecuador (on various international cases including crimes against the Great Barrier Reef in Australia), Quito (on crimes against Yasuní National Park), and San Francisco (on the Chevron oil spill and crimes against the delta ecosystem). Building on this model, Australian activists have now formed a permanent Australian Peoples' Tribunal for Community and Nature's Rights with Indigenous and non-Indigenous leadership. In each tribunal, Indigenous and non-Indigenous leaders and legal scholars have examined the cases and

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provided documented reports and rulings rooted in Earth jurisprudence as detailed in the Universal Declaration of the Rights of Mother Earth.

While these tribunals have no legal standing within states or international law, they function as a model for the application of the Universal Declaration of the Rights of Mother Earth (Global Alliance for the Rights of Nature 2010). Judgments are made in all cases and announced publicly on the GARN website, forming an initial body of international Earth jurisprudence for a potential global court. There is also some anecdotal evidence suggesting that the development of Earth jurisprudence through citizen RoN tribunals is impacting thinking on RoN within at least one national court. One well-known Ecuadorian legal scholar, Ramiro Avila, previously served as a prosecutor for the International Tribunal for the Rights of Nature. He is now a judge on the Constitutional Court of Ecuador, which, as chapter 4 will show, has greatly strengthened and expanded RoN jurisprudence within Ecuador in recent years. This illustrates the multidirectional linkages between RoN normative development at the global and national levels.

While the International Tribunal for the Rights of Nature has no direct impact on domestic RoN laws, it does provide leverage and normative frames for policy transformation. For example, the tribunal is considering the case of deforestation in the Bolivian Amazon as a case of ecocide. In 2018, an international tribunal delegation went to the Isiboro Sécure National Park and Indigenous Territory (Territorio Indígena y Parque Nacional Isiboro Sécure, or TIPNIS) in Bolivia on a fact-finding mission. The delegation was stopped for five hours and denied entry to the park to assess the government's road development project. Later that year the delegation found that the Bolivian government violated RoN and the Indigenous communities in a forty-four-page report that places the TIPNIS struggle within the global community and frames its legal argument through the Universal Declaration of the Rights of Mother Earth (Global Alliance for the Rights of Nature 2019). In this way the tribunal (as part of the global RoN network) employs "the boomerang pattern" popularized by Margaret Keck and Kathryn Sikkink (1998), using global shaming and "rhetorical entrapment" (Schimmelfennig 2001) to pressure the Bolivian government to better protect RoN domestically.

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MAPPING THE GLOBAL RIGHTS OF NATURE NETWORK

The increase in RoN legal provisions and rising saliency of Earth jurisprudence as a counternorm within international policy arenas has been fueled by a robust and growing transnational RoN network. Between 2010 (when the Global Alliance for the Rights of Nature was formed) and 2019 both the number and type of individuals and organizations working to promote RoN, as well as the networks connecting them, expanded greatly. We believe this network activation helps explain the growth of RoN legal provisions shown in table 2.1. To better understand the global governance system created to promote RoN and Earth jurisprudence, we undertook a project to map transnational RoN networks in 2019. The heart of the project was an electronic survey consisting of seventeen questions designed to collect information on the attributes of individuals and organizations working on RoN, the types of activities they engage in, and the structure of network ties linking RoN organizations. Since the population of RoN organizations was unknown, we used a snowball sampling methodology. The survey was conducted in four languages (English, French, Portuguese, and Spanish). Survey responses were supplemented with follow-up calls via phone and Skype, as well as information from organization websites and program documents.

We identified 1,189 individuals and organizations that either self-identify as RoN advocates (i.e., their primary focus is advancing RoN) or are identified by advocates as partners in projects to advance RoN (i.e., RoN is not their primary focus, but they occasionally partner on such projects). We were able to collect attribute data on 1,159 of these individuals/organizations. This includes actor type, the type of activity engaged in, and region.

ACTOR TYPE

Table 2.2 presents information on the type of actors (e.g., individuals and organizations) involved in RoN networks. In general, we treat organizations as network nodes, though numerous survey respondents chose to identify as individuals rather than representatives of organizations. These include, for example, academics and lawyers who are personally active

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Table 2.2 Actor type

Actor Type	Total Group		RoN Focus Only		Partners Only	
	Number	Percentage	Number	Percentage	Number	Percentage
Individual	263	23%	166	39%	97	13%
Community organization or domestic NGO	421	36%	150	35%	271	37%
International NGO or network hub	99	8%	43	10%	56	8%
University or think tank	123	11%	29	7%	94	13%
Local government	6	0.50%	2	0.50%	4	0.50%
National government	19	1.5%	3	0.50%	16	2%
Intergovernmental organization	21	2%	9	2%	12	1.50%
Business or foundation	206	18%	28	6%	179	25%
Total	1,159	100%	430	100%	729	100%

in RoN networks but whose universities or law firms do not advocate for RoN. In such cases we treat these individuals as nodes in the network. It is worth noting, however, that there are examples of university centers and organizations of lawyers that explicitly focus on RoN (e.g., the Barry University School of Law's Center for Earth Jurisprudence and CELDF). In these cases, we list the organization as the network node. Consequently, the number of individuals involved in RoN is far greater than the 1,159 nodes we identified.

We categorized network nodes according to eight types:

1. Individuals working independently (rather than as organizational representatives)
2. Community organizations and domestic NGOs
3. International NGOs and international network hubs (e.g., GARN)
4. University centers and think tanks (i.e., research organizations)

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5. Local governments (any subnational governmental entity)
6. National governments
7. Intergovernmental organizations
8. Business or philanthropic organizations

We also distinguished between those self-identifying as focusing on RoN and those identified by RoN actors as partners in their activities but who do not themselves focus on RoN.

A few observations are worth noting. First, the fact that the number of partners is nearly twice the number of RoN-focused organizations illustrates RoN's spread beyond the limited community of RoN activists into what might be considered more "mainstream" society. This is perhaps most evident in the number of partner businesses and foundations. Second, the majority of actors are individuals and community organizations / local NGOs. We believe that this supports the argument we made in chapter 1 about how RoN legal provisions are emerging in a manner similar to "convergent evolution" in which individuals around the world are responding to environmental pressures felt locally and looking for new systems that can better address these problems. While few government agencies have actively joined the movement, we have noted how a handful of governments have played an important role in inserting RoN into global policy debates regarding sustainable development. The growth in domestic RoN legal provisions has attracted the attention of researchers (admittedly, including us) who are spreading information about RoN. Most important for this chapter, network activation has produced dozens of international NGOs and transnational network hubs dedicated to promoting RoN globally.

ACTIVITY TYPE

We also categorized nodes according to the type of activity actors engage in when promoting RoN. Some engage in activism to mobilize popular support, but it varies as to whether they frame RoN in terms of environmental activism, Indigenous rights activism, or community rights activism. Others engage in legal work, like drafting RoN laws and defending them in court. Others engage in education and research. Others work within government, and we distinguish between those who are elected

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officials, those who are bureaucrats in domestic government (local or national), and those who are employees of intergovernmental organizations. Finally, we identify those who incorporate RoN into some aspect of their business activity (and we include philanthropic organizations in this group). Table 2.3 presents this information, again distinguishing between those focusing specifically on RoN and their partners.

It is worth noting that organizations listed in the "business or foundation" group include a wide variety of businesses that support RoN groups, from media entities and yoga studios that raise awareness about RoN to foundations and companies (like the Rockefeller Brothers Fund and Ben & Jerry's) that provide support to RoN organizations.

Table 2.3 Activity type

	Total Group		RoN Focus Only		Partners Only	
Activity	Number	Percent	Number	Percent	Number	Percent
Environmental activism	370	32%	158	37%	212	29%
Indigenous rights activism	58	5%	21	5%	37	5%
Community activism	225	19%	75	17%	150	20%
Legal work	67	6%	30	7%	37	5%
Education and research	310	27%	131	30%	179	25%
Elected government official	16	1%	3	1%	13	2%
Government employee	15	1%	1	1%	14	2%
Intergovernmental organization employee	11	1%	2	0.50%	9	1%
Business or foundation	87	8%	9	2%	78	11%
Total	1,159	100%	430	100%	729	100%

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THE STRUCTURE OF THE OVERALL NETWORK

We were able to collect relational data (who is connected to whom) for 884 nodes in the network. We were unable to find information about some organizations online, and some survey respondents chose to provide attribute data but not information about their partnerships, leading to a smaller sample. Nevertheless, we believe that the collected network data constitute a representative sample, both because they include 76 percent of the entire population of identified RoN organizations and because it is likely that the most active members of the network have some online presence and are thus included.

The global RoN network is quite fragmented (breadth = 0.778) and has extremely low density;[3] its density score is .003, meaning 0.3 percent of all possible ties in the network are present. In other words, while the overall network is quite large, most nodes (individuals or organizations) are only connected to one or a few other nodes in the network. The network's average degree is 2.5, meaning nodes have on average ties with two to three other nodes. There is however, much variation in the number of ties, with a few nodes having more than a hundred ties each, and many nodes having just one.

Another way to think about a network is to see how close nodes are to each other, measured by the average geodesic distance between all nodes in the network. Average distance measures the number of ties (on average) that exist on the shortest possible path connecting one node to another (akin to the "six degrees of separation" phenomenon). The RoN network's average distance is 3.35. This means that, on average, the shortest path between two nodes in the network involves three to four degrees of separation (connections). Calculating the frequencies of geodesic distances shows that 72 percent of all nodes in the network are indirectly connected at a distance of three or four ties (three to four degrees of separation). Only 18 percent of nodes are connected more directly (one to two degrees of separation). Ten percent of nodes are more distantly connected with five to seven degrees of separation. Seven connections is the maximum distance between any two connected nodes (i.e., the network's diameter).

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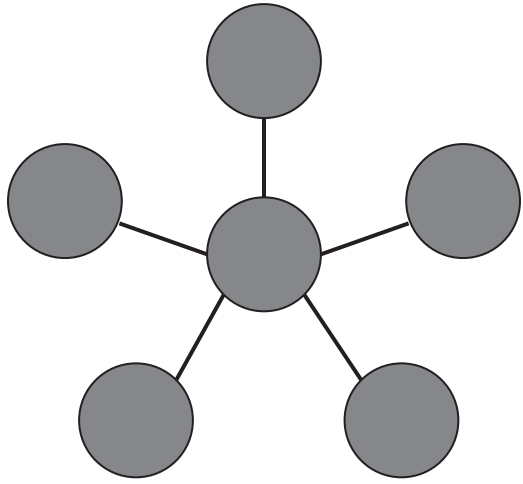
In many ways, the global RoN network resembles a classic "star" network, but with some important caveats. A pure star network is one where all nodes are directly connected to a central node, but not connected to one another (see figure 2.1). Two key indicators of a star network are efficiency and least upper bound scores close to 1. Efficiency measures the extent to which actors have a single tie (an in-degree of 1). Least upper bound measures the extent to which each pair of actors involves a common actor with directed ties to all other actors. The RoN network has an efficiency score of 0.99 and a least upper bound score of 0.99, indicating a shape resembling a star network.

Rather than a pure star network, however, the global RoN network is better described as having a smaller core network of actors that are more densely connected, with numerous nodes on the periphery that have single ties to one member of the core network. The vast majority of nodes in the global RoN network (724 out of 884) are "pendants," or nodes connected to a network by only one tie. This explains the very low density of the overall network, as well as indications of a star-shaped network. Removing these pendants from the analysis reveals a core network of 160 nodes that is much denser and more cohesive (see figure 2.2). In essence, the core resembles the center of a star network that has 724 pendants.

The density of the core network is 0.04, meaning 4 percent of all possible ties are present. This is more than ten times the density of the overall



2.1 A pure star network.

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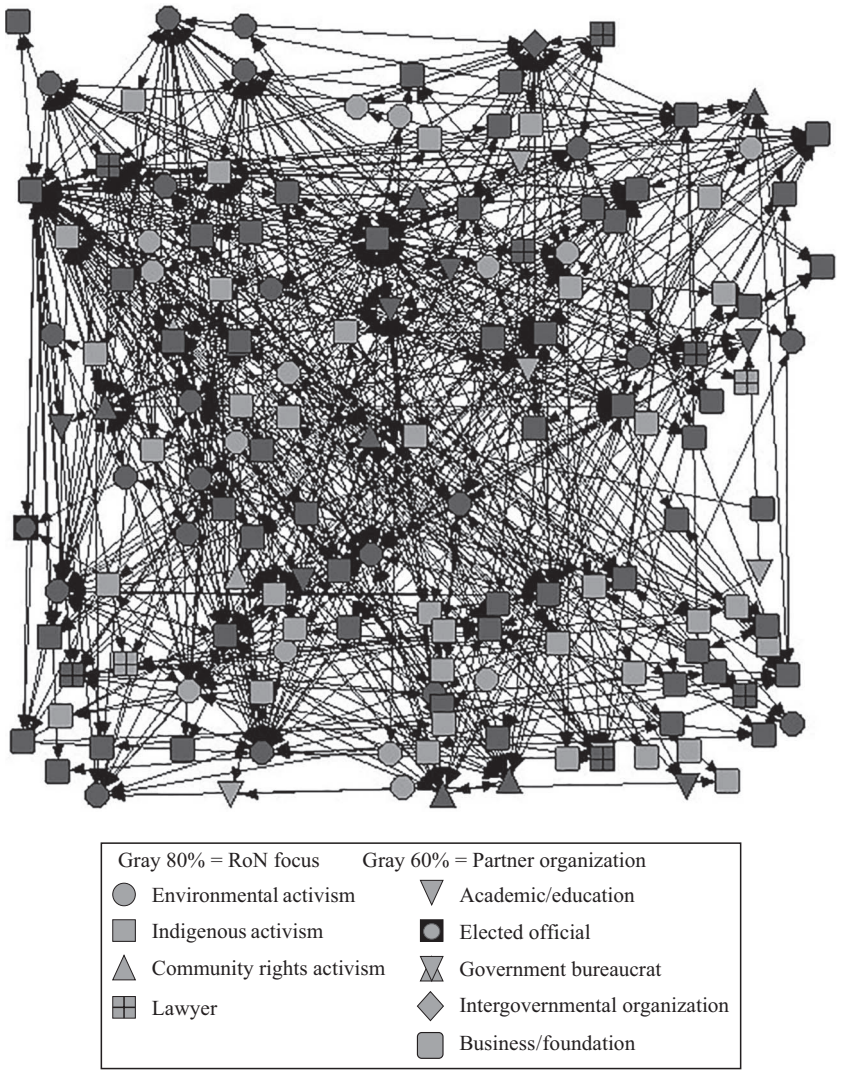
network, and reasonably dense for a large network of 160 nodes. The core network's average degree is 6.15, meaning nodes have on average ties with more than six other nodes (compared to 2.5 in the overall network). In sum, the core is a denser, more cohesive network than the overall network.

As figure 2.2 shows, the core network (like the overall network) includes organizations involved in all types of activities. More interesting



2.2 The core RoN network (pendants removed).

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is the distribution of RoN-focused organizations and partner organizations. The vast majority (68 percent) of core network members are organizations that focus on RoN. By contrast, the vast majority (72 percent) of the pendants in the overall network are partner organizations. Many of the partner organizations in the core network have significant informal ties to RoN focused organizations, helping to explain the relative density of their network ties (placing them in the core network).

In sum, the network structure shows that over the last decade a sizable number (more than one hundred) RoN-focused organizations have formed a dense and cohesive transnational network dedicated to promoting RoN legal provisions globally. This core is surrounded by a very large number of pendants (nearly five times the number of core network members) dominated by partner organizations that sit on the periphery of the global network. We argue that this suggests that after a decade of mobilization and network activation among RoN focused organizations, these organizations are now expanding their networks and mainstreaming the concept of RoN by building partnerships with organizations who do not focus explicitly on RoN. This likely partially explains the recent increase in RoN legal provisions.

CENTRAL NODES IN THE NETWORK

One way to think about influential nodes in the network is to examine which ones are the most central. Given the fragmented nature and star shape of the overall RoN network, we measure centrality as "betweenness" (i.e., which actors most often lie on the geodesic paths between other pairs of actors who otherwise would not be connected). Organizations with the highest centrality scores are the ones that most other organizations depend on to make connections with. In this sense, these nodes can be seen as key brokers. Table 2.4 lists the fourteen most central organizations (those with betweenness scores falling in the top 99th percentile).

By far the most central node is that of GARN, which has the greatest number of direct ties of any node in the network and is tied to organizations engaged in all types of activities. This is not surprising given that GARN was one of the first global network hubs created specifically to promote RoN and thus has had the most time to expand and consolidate. As an alliance, GARN is probably best understood as a hub connecting

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Table 2.4 The most central nodes in the Rights of Nature network

Organization	Centrality Score*
GARN	331,069
UN Harmony with Nature Programme	125,934
CELDF	105,194
WECAN	96,386
End Ecocide on Earth	79,853
Earth Law Center	62,936
CEDENMA	52,428
Movement Rights	25,369
Ohio Community Rights Network	23,167
Center for Earth Jurisprudence	20,871
Rights of Mother Earth Mexico (Derechos de la Madre Tierra Mexico)	20,106
Australian Earth Laws Alliance	19,673
Gaia Foundation	15,602
Nature's Rights	15,419

Note: *Calculated as Freeman's approach to betweenness (Hanneman and Riddle 2005, 163); mean = 1,413; standard deviation = 13,542.

various networks of environmental and human rights activists, Indigenous rights activists, community rights activists, lawyers, scientists, academics, and others. Eight of the other central nodes listed in table 2.4 (the Australian Earth Laws Alliance, the Center for Earth Jurisprudence, CEDENMA, the Earth Law Center, End Ecocide on Earth, the Gaia Foundation, Movement Rights, and WECAN) have representatives currently serving on GARN's Executive Committee. Two others—CELDF and Derechos de la Madre Tierra Mexico—are members of GARN. The Center for Democratic and Environmental Rights (CDER) was formed after this survey was conducted, but includes former CELDF leaders and an Australian Earth Laws Alliance (AELA) co-founder, adding to the network links.

The fact that so many GARN members are themselves highly central nodes in the global RoN network helps explain the network's star-shaped

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pattern. Each of these GARN members sits at the center of distinct networks of environmental NGOs (e.g., CEDENMA and End Ecocide on Earth); community rights organizations (e.g., CELDF and Movement Rights), women's rights and ecofeminist organizations (e.g., WECAN); Indigenous organizations (e.g., Derechos de la Madre Tierra Mexico, the Gaia Foundation, Movement Rights, and WECAN); and environmental lawyers (e.g., the Australian Earth Laws Alliance, CELDF, the Center for Earth Jurisprudence, and the Earth Law Center). Through their own connections as members of GARN, these central nodes create a dense network that begins to form the core of the global RoN network (see figure 2.3).

THE NETWORK OF THE UN HARMONY WITH NATURE PROGRAMME

The second most central node in the global RoN network is that of the UN Harmony with Nature Programme, which is one of the most truly global hubs in the network. It includes not only members from every continent but also includes leading members from each of the aforementioned networks. In this way it serves as a connecting node for other more regionally based networks. The UN Harmony with Nature Programme has been a crucial node for incorporating scientists and academics into the global RoN network. And, as we have noted, it is also a prime example of how RoN advocates have used network construction to advance RoN norms within international institutions.

THE COMMUNITY ENVIRONMENTAL LEGAL DEFENSE FUND

The third most central node in the network is CELDF. While CELDF does partner with organizations to develop RoN legal provisions outside the United States, its high degree of centrality results from the fact that it has spent more than a decade constructing a network of grassroots organizations dedicated to promoting community rights and RoN at the local level in the United States. The US network is decentralized, with community-level organizations connected to state-level organizations, which in turn coordinate with CELDF.[4] Consequently, CELDF sits at the center of this US-based network and connects it to global hubs like GARN and the UN Harmony with Nature Programme.

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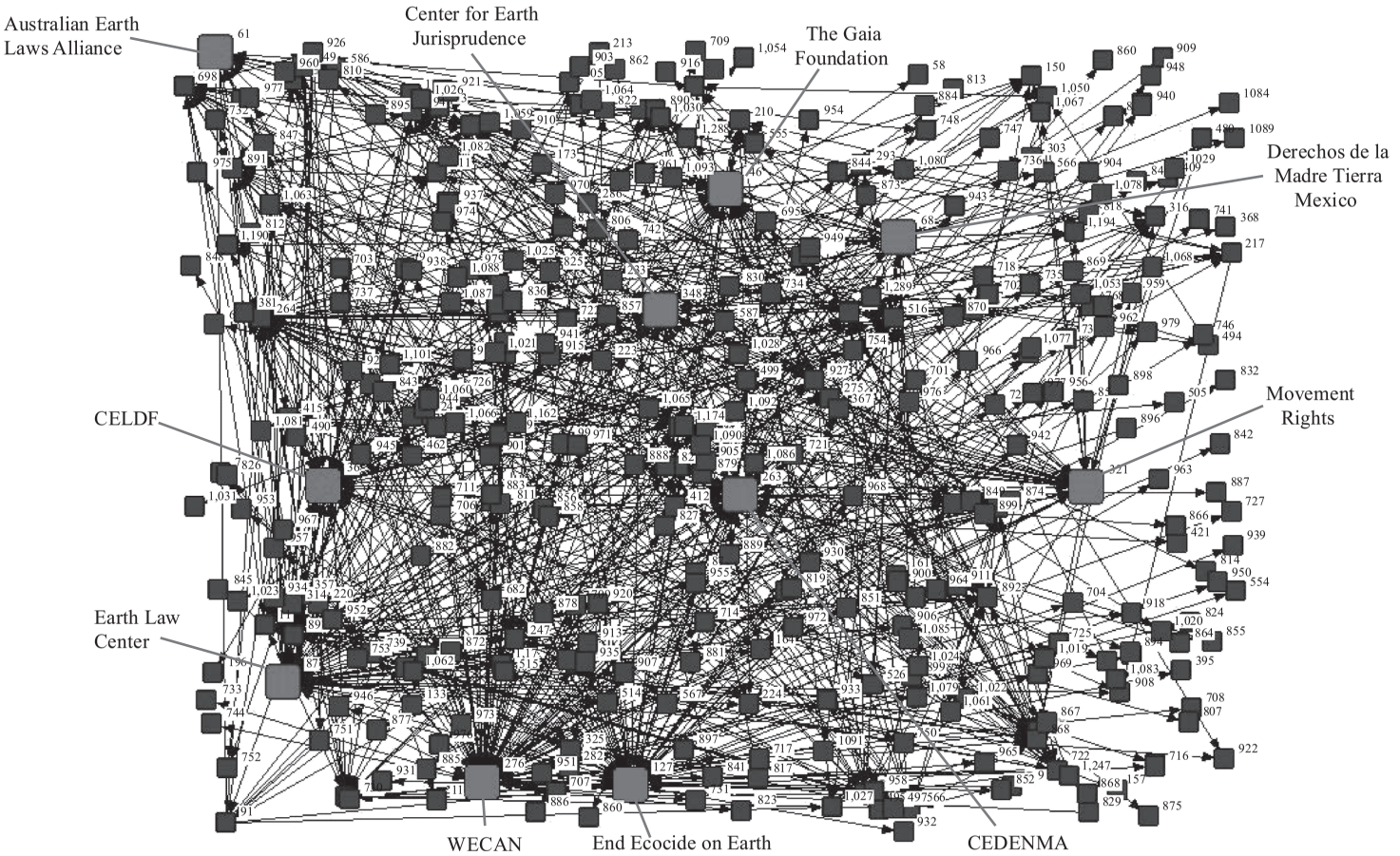

2.3 Ego networks for central GARN members.

LINKING ORGANIZATIONS

Other nodes in the network are influential (and have high centrality scores) because they serve as go-betweens, or "brokers," between central nodes with many ties. A prime example is the Australian Earth Laws Alliance. Michelle Maloney, the cofounder and national convener of the alliance, holds leadership positions within every large, central hub of the global RoN network. She was a member of GARN's Executive Committee, a member of the UN Harmony with Nature Knowledge Network, an Associate with the Center for Democratic and Environmental Rights, and the steering group for the Ecological Law and Governance Association (ELGA), which is a more recent network hub that is rapidly growing in influence and will likely gain a more central place in the network in future years. ELGA was formed in October 2017 by members of the World Commission on Environmental Law of the International Union for Conservation of Nature (IUCN) and is heavily populated by lawyers and academics. The Australian Earth Laws Alliance has also partnered with CELDF on a campaign to secure RoN for Australia's Great Barrier Reef. Consequently, the alliance is one of a few nodes that connects the main hubs in the global network, making it a key broker.

REGIONAL NETWORKS

Finally, we collected data on the regions where individuals and organizations predominantly work, as presented in table 2.5. Canada and the United States make up the region with the most organizations, due in large part to CELDF's work mobilizing a large grassroots network of community organizations. North America is also the region with the most cohesive and dense regional network. It is one of the few regions where RoN organizations are clustered regionally; ties within the region are nearly double the number of ties with organizations from other regions.[5] Much of this is due to the CELDF network, but there are also important regional networks centered around the Center for Earth Jurisprudence, the Earth Law Center, and WECAN.

Europe and Latin America are the regions with the next highest levels of network activity. Latin America's RoN network is characterized by a series of clusters connected by linking nodes (see figure 2.4). This pattern

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Table 2.5 Region

Region	Total Group		RoN Focus Only		Partners Only	
	Number	Percent	Number	Percent	Number	Percent
Canada and the United States	429	37%	172	40%	257	35%
Latin America	209	18%	88	20.50%	121	16%
Europe	292	25%	88	20.50%	204	28%
Asia	42	3.50%	14	3%	28	4%
Middle East and North Africa	17	1.50%	2	0.50%	15	2%
Sub-Saharan Africa	54	5%	19	5%	35	5%
Australia and New Zealand	36	3%	16	3.5%	20	3%
International	80	7%	31	7%	49	7%
Total	1,159	100%	430	100%	729	100%

Note: *Regional clustering for all regions was determined by calculating David Krackhardt and Robert Stern's E-I (External-Internal) Index using UCINet software (Krackhardt and Stern 1988).

reflects relatively recent efforts to consolidate a Latin American RoN network. These efforts gained strength at the International Rights of Nature Symposium held in Quito, Ecuador, in September 2018 to commemorate the tenth anniversary of the creation of Ecuador's constitution. The symposium was sponsored by GARN and featured a strategy session led by GARN leaders to discuss ways to strengthen the network. During this symposium many Latin American organizations began working to create a Latin American hub within GARN.

Figure 2.4 shows that the Latin American RoN network is centered on GARN (the main cluster in the center of the graph), but is connected to various other regional clusters through linking organizations like Alliance for the Rights of Mother Earth Colombia (Alianza por los Derechos de la Madre Tierra Colombia) and Rights of Mother Earth Mexico (Derechos de la Madre Tierra Mexico). The smaller clusters in the graph mainly represent groups of Ecuadorian environmental and Indigenous groups, linked

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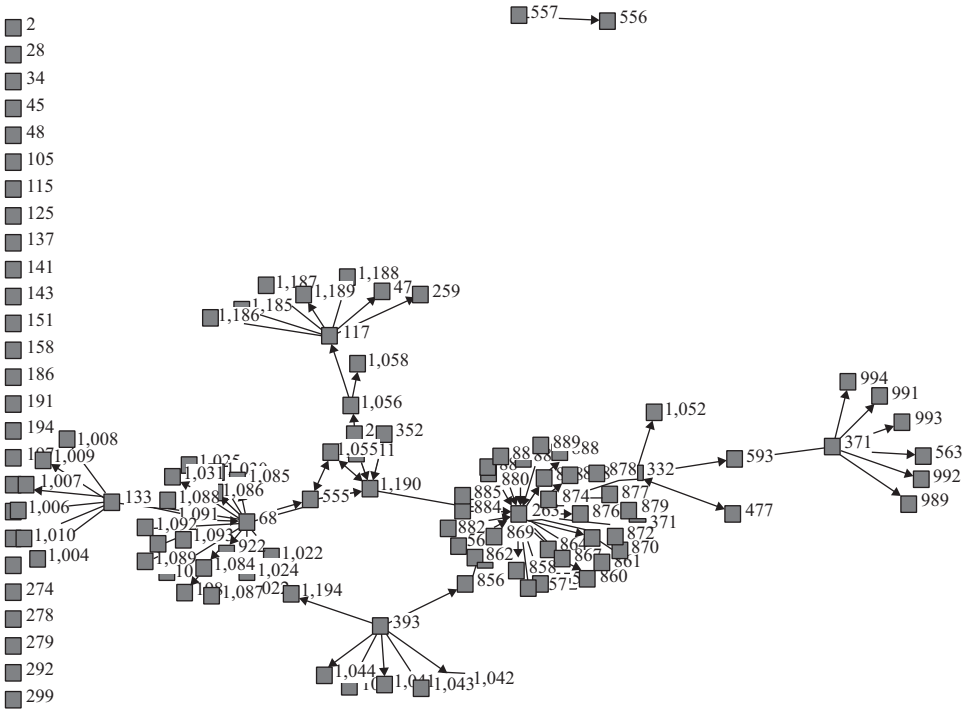

2.4 The Latin American RoN network.

through environmental NGOs like Ecological Action (Acción Ecológica) and legal organizations like the Ecuadorian Center for Environmental Rights (Centro Ecuatoriano de Derecho Ambiental). The predominance of Ecuadorian organizations is not surprising given that RoN legal provisions have existed for more than ten years.

In contrast to North America and Latin America, RoN organizations based in Europe have only recently begun to cluster regionally. In 2019, ties among European nodes had mainly produced distinct clusters (see figure 2.5). At the time of this writing in early 2021, however, efforts were underway to create a more cohesive and denser European RoN network. A number of European-based members of GARN created a European hub, similar to that created in Latin America. These efforts began at the Earth Rights Conference held in Sigtuna, Sweden, in May 2019. The hub was formed in late 2019, as our network analysis project was ending.

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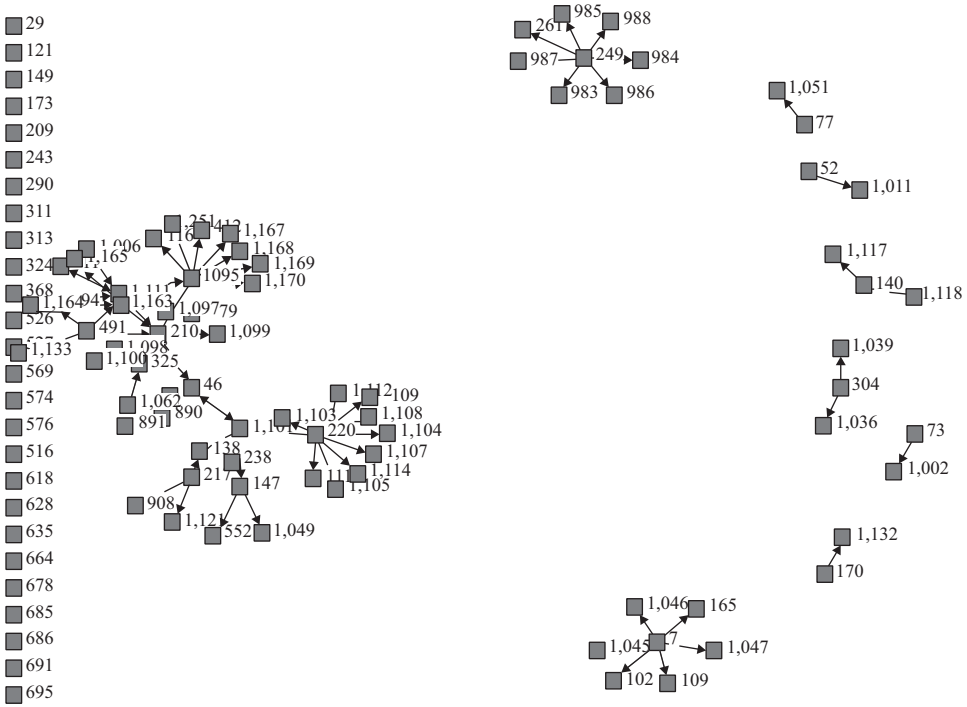

2.5 The European RoN network.

GARN's European hub strengthens and expands the connections among a number of European RoN organizations included in the large cluster seen at the left of figure 2.5. These include members of End Ecocide on Earth from across the continent, the Gaia Foundation, Rights of Mother Earth, and a network of Swedish RoN organizations, among others. Europe's RoN network is becoming more cohesive and will soon more closely resemble Latin America's network.

While our research uncovered fewer nodes in sub-Saharan Africa than in some other regions, African organizations are connected in a relatively cohesive and dense regional network compared to many other regions. The African Earth jurisprudence movement includes a network of learning centers and programs to train community leaders in Earth jurisprudence, as well as the NGOs created by trained community leaders. These efforts are supported by the Gaia Foundation (a central node in global RoN networks and a founding member of GARN), which developed a

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three-year training program in Earth jurisprudence for African civil society leaders. While our 2019 network analysis did not capture many RoN organizations in Africa, we note that we observed a large number of African organizations participating in webinars and meetings on RoN held in 2020, suggesting that RoN networks are expanding and strengthening in Africa just as they are in Latin America and Europe.

Within the Asia-Pacific region we were unable to find evidence of dense network construction, with the exception of Australia, which has emerged as the center of a vibrant and growing network centered on the Australian Center for Rights of Nature and the Australian Earth Laws Alliance.

CHAPTER SUMMARY

The structure of the global RoN network maps quite closely to the geography of where RoN legal provisions exist. The relative density and cohesiveness of RoN networks in Latin America and North America doubtless helps explain why the vast majority of existing and pending RoN legal provisions are located in these regions. These are driven by social mobilization and pressure. It is also not surprising that cases from Africa and Europe have contributed to the surge in legal provisions since 2017 given the network construction underway. There are, of course, a number of high-profile legal provisions in Asia (e.g., court rulings in Bangladesh and India recognizing RoN), but these appear to result from external influences (e.g., judges learning from courts in other countries, particularly New Zealand) rather than concerted pressure from domestic movements (see chapter 8). Overall, the strong correlation between the shape of the RoN network and the trajectory of RoN legal provisions suggests that network construction is contributing to the recent rise in RoN legal provisions.

This chapter showed how the formation of transnational networks and new global governance institutions is reshaping debates over how sustainable development should be conceptualized and implemented in international policy arenas. Norm entrepreneurs, from IUCN lawyers to UN secretaries-general to Pope Francis, are raising Earth jurisprudence as a salient counternorm to challenge the dominant development paradigm

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that views Nature as individual stocks of resources to be extracted to fuel exponential growth in consumption and production at any cost. But as we noted in chapter 1, it is important to remember that the emergence of this global networked governance system was inspired and stimulated by early domestic experiments with RoN legal provisions—first in the United States and Ecuador, and subsequently New Zealand—which developed simultaneously through distinct domestic processes in the early 2000s. We will examine these processes in chapter 3.

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3

WINDOWS OF OPPORTUNITY, MULTIPLE PATHS, AND RIVAL MODELS

The earliest Rights of Nature (RoN) laws emerged through parallel processes before the transnational network construction discussed in chapter 2 took off. This chapter explains the origins of these early laws and the puzzle of why they look so different from each other.[1] It examines the divergent institutional expressions of early RoN laws and the implications for global normative development. Chapter 1 presented our theoretical explanation, which borrows insights from convergent evolution theory in evolutionary biology and research on norm construction. To illustrate the convergent evolution of functionally similar but institutionally different RoN laws, this chapter compares their emergence in three countries: the United States, Ecuador, and New Zealand. We chose these countries because they were early adopters of RoN and they present three very different models for how to institutionalize RoN.

In our case comparisons, we highlight three important contextual differences that caused RoN laws in these countries to evolve in different institutional forms. First, national political opportunity structures can be relatively open or closed, influencing the type of legal provision adopted. As we will show in this chapter, windows of opportunity for strong national laws opened through the writing of a new constitution in Ecuador and New Zealand's treaty settlements with Māori iwi. By contrast, the US's closed opportunity structure required RoN advocates to pursue local ordinances with questionable legal standing.

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Second, different types of organizations advocate for RoN laws to achieve distinct motivations and goals, and they develop different coalitions based on their position in larger sociopolitical alliance structures. Third, contestation is shaped by cultural context, which influences the kind of frames used to mobilize support. Together these factors shape how RoN is framed, contested, and expressed institutionally. In the United States, environmental lawyers seeking stronger environmental laws allied with community activists seeking to challenge corporate exploitation of local ecosystems. This has caused RoN to be framed as an expression of community rights and a tool for strengthening democracy. In Ecuador, by contrast, coalitions of environmental movements, Indigenous movements, and leftist political movements framed RoN as a tool for achieving a post-neoliberal development model infused with Indigenous concepts. New Zealand's laws emerged through bargaining between Māori iwi and New Zealand's government over natural resource management. They consequently emphasize Māori understandings of ecosystems as living ancestors and the responsibility of guardianship.

To more effectively analyze the emergence of competing RoN models, we present a conceptual framework for comparing RoN laws along two axes: scope and strength. We then trace the origin of RoN laws in each country, showing how each emerged independently in response to local manifestations of macrolevel pressures and how variation in the local conditions explain key institutional differences. Together the case comparisons show how the legal tools and collective action strategies employed may differ based on local context and opportunity, causing a nascent RoN norm to be constructed and institutionalized differently.

COMPARING RIGHTS OF NATURE LAWS

Owing to the unique origins in each country, RoN in the United States, Ecuador, and New Zealand are enshrined in three different types of legal provisions. In Ecuador, RoN are recognized by the 2008 Constitution of the Republic of Ecuador. New Zealand has two acts of parliament recognizing RoN, both resulting from earlier treaty agreements signed with Māori iwi: the 2014 Te Urewera Act and the 2017 Te Awa Tupua Act. On December 20, 2017, New Zealand's government signed a Record of Understanding with

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the Taranaki iwi to similarly recognize Mount Taranaki as a legal person. This will likely be formalized through an act of parliament in the coming years. In the United States, at least eighty-seven legal provisions recognizing RoN have been adopted by local governments and tribal authorities. The first was in Tamaqua Borough, Pennsylvania, in 2006.

These RoN laws share general normative beliefs consistent with Earth Jurisprudence. Yet they vary in important ways that shape how the RoN norm is practiced and thus constructed. We compare these laws using indicators of two concepts: scope and strength (see table 3.1). *Scope* refers

Table 3.1 Indicators of scope and strength of Rights of Nature laws

		Ecuador	United States*	New Zealand
Scope	How is Nature defined (framed)?	All of Nature; Pachamama (Mother Earth)	Ecosystems in municipalities (natural communities)	The Whanganui River and the forest Te Urewera (living spiritual beings)
	Which rights?	To exist and maintain ecosystem integrity; restored when damaged	To exist and "flourish"	Legal personhood status
Strength	Type of law / legal standing	Constitution (maximum legal standing)	Municipal ordinances (subordinate to state and federal law); home rule charters (legal standing unclear)	Acts of Parliament (parliamentary supremacy)
	Hierarchy of rights	RoN declared transversal	Places RoN over corporate rights	Not explicitly addressed
	Who represents Nature?	Everyone	City/municipal citizens	Appointed guardians
	Mandated responsibility for protecting Nature?	No	No	Yes

Note: *We acknowledge some variation in US RoN laws; this table presents the most common characteristics.

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to the range of rights afforded and how broadly these rights are applied. This has normative implications regarding how Nature is conceptualized and how its rights are defined in practice. *Strength* refers to enforcement capacity expressed through laws' formal authority and individuals' capacity and responsibility to enforce Nature's rights. In the sections that follow, we compare the laws in our sample along these two conceptual axes.

SCOPE: DEFINING RIGHTS-BEARING NATURE

All RoN laws treat Nature as a legal subject with rights. In all cases, Nature is conceptualized at the ecosystem level rather than at the level of individual flora and fauna. The laws at least implicitly recognize that humans are part of these ecosystems, but they vary in how expansive the boundaries of rights-bearing Nature are.

Ecuador's constitution is the most expansive; its preamble defines Nature as the Andean Indigenous deity "Pachamama, where life is reproduced and occurs" (Republic of Ecuador 2008). Pachamama is often translated as Mother Earth in English. No other definition is offered, purposefully leaving the term expansive. Interviews with people who crafted Ecuador's RoN provisions show they intended to portray Nature's rights as being inherent to all of the Earth's ecosystems, including those beyond Ecuador's borders. This is evidenced by the fact that in 2010 Ecuadorian RoN activists submitted a lawsuit to the Constitutional Court of Ecuador, invoking universal jurisdiction to sue British Petroleum for environmental damage resulting from its 2010 oil spill in the Gulf of Mexico. While the court declined to hear the suit, the expansive definition of Nature remains in the constitution.

On the other extreme are the two New Zealand laws. These laws do not grant rights to all of Nature, but only to particular ecosystems: the Whanganui River watershed (in the Te Awa Tupua Act) and the forest Te Urewera (in the Te Urewera Act). The laws define the boundaries of these ecosystems and restrict legal personhood to them. Like Ecuador's constitution, New Zealand's RoN laws recognize the ecosystems as living spiritual beings (for details, see chapter 6). As we explain herein, this similarity results from the fact that both countries' RoN laws emerged from efforts to codify Indigenous peoples' non-Western understandings of humans' relationship to Nature within a Western legal framework.

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One consequence is that elements considered to be nonliving in Western science (e.g., rocks, soil, and water) are legally defined as both living and having metaphysical characteristics that make them deserving of moral consideration. This normative framework has important practical implications.

By contrast, US RoN ordinances do not frame ecosystems as living spiritual beings, but rather as sets of "natural communities" whose welfare is necessary for the well-being of human communities. Most US ordinances define Nature as some combination of wetlands, streams, rivers, aquifers, soil, and native species of flora and fauna. The US laws restrict rights to ecosystems within the municipal boundaries, and unlike those of Ecuador do not recognize RoN beyond local ecosystems.

SCOPE: WHICH RIGHTS ARE GRANTED?

Most important from a norm construction perspective is that early RoN laws vary in the specific rights recognized. Ecuador's constitution reflects a holistic approach to conceptualizing Nature's intrinsic value and an emphasis on maintaining balance within natural systems. Title II, chapter 7, of the constitution recognizes Nature's rights to exist, to maintain its integrity as an ecosystem, and to regenerate "its life cycles, structure, functions and evolutionary processes." Articles 71–72 dictate that Nature also has the right to be restored if injured, independent of human claims for compensation.

Many US RoN ordinances go a step further and also recognize ecosystems' right to "flourish." This distinction has important implications for determining violations of RoN (and thus which actions humans are obliged to prevent). Humans invariably impact the ecosystems they live in. Under Ecuador's constitution, human impacts do not violate Nature's rights so long as they do not irreparably damage the integrity of an ecosystem to the point at which it cannot regenerate itself. One author of Ecuador's RoN provisions likened the distinction to the difference between breaking your arm (a temporary damage that will heal naturally) and the permanent damage of cutting off your arm (Greene 2015). By contrast, the right to flourish switches the emphasis from preventing permanent damage to ensuring some level of well-being for an

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ecosystem. US ordinances do not define what it means to flourish, but they open the possibility of a much more restrictive definition of which human impacts are acceptable. Metrics that regulators could use to measure ecosystem flourishing are currently being constructed (Kauffman and Sheehan 2019).

By comparison, New Zealand's two laws do not recognize ecosystems as having unique, intrinsic rights, but rather extend human rights associated with legal personhood to the ecosystems. Te Awa Tupua (the Whanganui River watershed) and Te Urewera (the forest) are simply declared to be legal persons, with "all the rights, powers, duties, and liabilities of a legal person" (New Zealand Parliamentary Counsel Office 2014a, art. 11; New Zealand Parliamentary Counsel Office 2017, clause 14). Legal personhood grants procedural access to New Zealand's political and legal systems. For example, these ecosystems can own property, incur debts, petition the courts and administrative agencies, and receive reparations for damages should a court rule in their favor. Yet the laws do not guarantee the ecosystems' right to maintain their integrity or to be restored, much less to flourish.

STRENGTH: TYPE OF LAW AND LEGAL STANDING

RoN laws challenge the interests of powerful economic actors who themselves have legally recognized property rights. Consequently, RoN are often challenged in court. One measure of strength is whether RoN norms are enshrined in laws that have strong legal standing within a country's political system. Formally, Ecuador's constitutional RoN provisions are extremely strong; they have the highest legal standing, although they can conflict with other constitutional rights. Because New Zealand's political system recognizes parliamentary supremacy, national acts have superior legal standing. By contrast, US municipal ordinances may be preempted by state constitutions and/or the US Constitution.

These institutional differences matter because it is one thing to institutionalize a new norm into law but quite another to strengthen emerging norms through practice. In the early stages of a norm's life cycle, when the norm remains highly contested, laws are often not applied in ways that support the norm (Dancy and Michel 2016). For this reason,

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an important informal measure of strength is whether RoN laws have been challenged in court and, if so, if the laws have been upheld and applied in practice. This is affected by RoN laws' position in the larger legal structure.

RoN jurisprudence (the legal reasoning undergirding RoN and its support within the legal system) has developed the furthest in Ecuador. This is unsurprising given its constitutional protections and the nation's status as an early adopter of RoN laws. Between 2008 and 2020 there were thirty-four lawsuits involving RoN. In twenty-seven cases, the courts upheld the RoN. In chapter 4 we document these lawsuits and explain why RoN were upheld in some cases and not others.

By contrast, US RoN ordinances have yet to be upheld by a court; at least three lawsuits are ongoing. For example, ordinances invoking RoN to ban hydraulic fracturing, or fracking, in Grant and Highland Townships, Pennsylvania, have been challenged in court by affected energy corporations.[2] In the Grant Township case, the judge ruled that the ordinance overstepped the legislative boundaries of a municipality. Undeterred, residents experimented with a new institutional expression of RoN—a home rule charter. Legal tools applicable in forty-three US states, home rule charters are municipal constitutions that override a municipality's second-class status in relation to the state (Russell and Bostrom 2016). In 2015, Grant Township passed its home rule charter to circumvent the preemptive nature of state constitutions over municipalities. Highland Township soon followed suit. While ongoing in the courts, US cases illustrate (1) the relative weakness of local RoN laws within the US federal system; (2) how RoN laws are evolving through contestation, experimentation, and learning; and (3) how RoN institutionalization can affect the prospects for using law to strengthen RoN and Earth Jurisprudence norms over time.

The New Zealand RoN laws remain untested in the courts. This is largely because the laws are structured in a way that allows RoN to be protected proactively within decision-making bodies rather than retroactively through the courts (see the discussions of the Nature's rights model versus the legal personhood model in chapter 1). Appointed guardians that speak for an ecosystem are embedded in new governance institutions charged with managing the ecosystem in an integrated way that ensures its health and

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well-being. This gives the ecosystem a voice in decision-making processes regarding its management. Conflicts over competing interests and rights can be addressed proactively in the decision-making process, reducing the need to turn to the courts. Chapter 6 examines how this model functions in Te Urewera, New Zealand.

It is possible that lawsuits may arise in the coming years. Regardless, since New Zealand's laws do not recognize specific rights beyond legal standing, much of the content of RoN norms in New Zealand will be constructed through efforts to put RoN into practice. Resulting conflict will need to be resolved either through new ecosystem governance institutions or the courts.

STRENGTH: RESPONSIBILITY FOR DEFENDING NATURE

RoN laws also vary in who can legally represent Nature to protect its rights—and whether anyone is obligated to do so. Theoretically, when authority to represent Nature is distributed broadly, the barriers to defending Nature's rights are lower. Ecuador's constitution grants legal representation most broadly; article 71 states that "all persons, communities, peoples and nations can call upon public authorities to enforce the rights of Nature" (Republic of Ecuador 2008). Anyone, Ecuadorian citizen or not, can bring suit to defend the RoN. US ordinances are somewhat more restrictive, limiting legal representation to citizens of the city or township.

New Zealand's laws take a very different approach. These laws emphasize the concept of responsibility rather than rights, and create statutory guardians charged with promoting and protecting the interests, health, and well-being of Te Awa Tupua and Te Urewera. While this legal design limits who can represent Nature, advocates argue that the guardianship model is stronger because it appoints representatives who are legally mandated to advocate for Nature's interests and protect its rights, not only in courts but also in policy and social forums. As Catherine Iorns Magallanes notes, New Zealand's model "ensures that all activities affecting [these ecosystems] are monitored, and . . . [their interests] are upheld by a body appointed to do solely that. It doesn't leave the protection of these interests to the chance that a person might want to take a role as guardian on

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behalf of the river. . . . It requires the exercise of this role at all times and allows it to be exercised in other fora, not solely court" (2017, 1).

While Ecuadorian and US laws provide few barriers to protecting Nature, responsibility to do so is not legislatively mandated. This may weaken them compared to New Zealand's laws, since the ability to sue in court does not necessarily mean any particular person will take up this responsibility of protection. Ecuador's model is more subject to collective action problems.

STRENGTH: HIERARCHY OF RIGHTS

Laws often recognize multiple rights that at times come into conflict. Another measure of strength is the degree to which RoN laws establish a hierarchy of rights and define the relationship between RoN and other types of rights—particularly property rights. The US ordinances are the strongest in this respect. For reasons discussed below, most US RoN ordinances explicitly limit the rights of corporations and financial interests and subordinate these to the RoN recognized by the ordinances.

In Ecuador judicial rulings are establishing the principle that RoN are transversal, meaning that they are connected to and impacted by all other elements of the legal order and therefore are more fundamental than other rights, such as property rights (see chapter 4). In 2015 this principle was upheld by the Constitutional Court of Ecuador. Citing articles 83 and 395 of Ecuador's constitution, the court determined that "all the actions of the State, as well as of individuals, must observe and be in accordance with the rights of Nature" (Corte Constitucional del Ecuador 2015). Based on this reasoning, the court rejected arguments that private property rights trump RoN.

The hierarchy of rights in New Zealand's Te Awa Tupua Act is less clear. On one hand, part 2, clause 16 states that the act does not limit private property rights. On the other hand, the act establishes legal weighting provisions specifying that any actor whose actions affect the river must "have particular regard to" the interests of the river and "recognize and provide for" the river's status as an indivisible, living, whole spiritual being (New Zealand Parliamentary Counsel Office 2017). Moreover,

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resource use in Te Awa Tupua is subject to the Resource Management Act, which balances ecocentric values against more anthropocentric concerns (Barraclough 2013). In sum, the Te Awa Tupua Act grants the river (via its guardians) the ability to defend its interests by invoking various ecocentric elements of the Resource Management Act. Nevertheless, the Resource Management Act also recognizes anthropocentric concerns, and specific conflicts would ultimately have to be resolved through the Environment Court of New Zealand.

The hierarchy of rights is handled somewhat differently in the Te Urewera Act. Te Urewera is not subject to the Resource Management Act because it was formerly a national park governed by special Department of Conservation provisions. For the same reason, there is no private property within Te Urewera. Consequently, the Te Urewera Board has full authority to determine management of the forest and is charged with doing so according to ecocentric principles and the interests of Te Urewera as a living, spiritual being (see chapter 6). It is this autonomy of the board, along with the charge of managing in the interests of Te Urewera, that makes the Te Urewera Act stronger than the Te Awa Tupua Act in terms of prioritizing Nature's rights.

INDEPENDENT EVOLUTION OF RIGHTS OF NATURE LAWS

Why is RoN constructed and institutionalized so differently? In this section we trace the independent origin of early RoN laws, highlighting how differences in local context shaped their expression. We focus on three key contextual differences: (1) the types of organizations advocating RoN laws, their position in larger sociopolitical alliance structures, and their motivations/goals; (2) the national political opportunity structure; and (3) cultural context.

THE FIRST US RIGHTS OF NATURE LAW

The first US RoN ordinance has its roots in the work of the Community Environmental Legal Defense Fund (CELDF), which was formed in 1995 by environmental lawyers who concluded that existing environmental laws were inadequate. These lawyers advocated new laws that prevented

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environmental harm (rather than merely mitigating it) and strengthened the rights of communities to protect themselves from environmental degradation caused by industrial activity. Recognizing that partisan gridlock made it extremely difficult to pass new national environmental laws, and having lost faith in conventional regulatory organizing, CELDF established a new approach to grassroots organizing centered on its Democracy Schools, which trained community residents "to confront the usurpation by corporations of the rights of communities, people, and earth" (Community Environmental Legal Defense Fund 2015a).

CELDF began helping communities develop community bills of rights that could provide a legal basis for residents to defend their interests against corporations that invoked property rights to justify environmentally destructive behavior. The strategy is to train "residents and activists how to reframe exhausting and often discouraging single issue work (such as opposing fracking, pipelines, GMOs, etc.) in a way that can confront corporate control and state preemption on a powerful single front: people's inalienable rights" (Community Environmental Legal Defense Fund 2015a). Framing RoN in terms of community rights and democracy was effective because of its cultural resonance in the United States. Notably, it resonates not only in liberal communities known for environmental activism but also in conservative communities like Tamaqua Borough, Pennsylvania.

In 2006 Cathy Miorelli, a local supervisor for Tamaqua Borough, attended one of CELDF's Democracy Schools. Miorelli was concerned about a planned new sewage sludge deposit facility in the borough. A nurse, Miorelli had been studying the increasing incidences of cancer in her vicinity with a doctor from a neighboring town; they had gathered evidence of a cancer linked to industrial toxins like benzene. Since their communities bordered three US Environmental Protection Agency Superfund sites, the two worried that contamination by yet another facility would put residents at even more risk. Inspired to take action, Miorelli ran for and won a seat as a local supervisor and attended CELDF's Democracy School.

After the experience, Miorelli said, "I realized that we could act on what we wanted most and put together an ordinance that would prevent contaminants from coming into our town" (Community Environmental Legal Defense Fund 2015b). She arranged for CELDF representatives

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to meet with the Tamaqua Borough Council various times. Miorelli, the mayor, and the council's supervisors held several town meetings to educate the public and mobilize popular support. Despite the threat of lawsuits against the town and individual supervisors, the borough passed the world's first RoN ordinance in 2006 (Tamaqua Borough 2006).

The Tamaqua Borough Sewage Sludge Ordinance was novel at the time in that it considers natural communities and ecosystems to be legal "persons" and explicitly denies the same recognition to corporations. This is to limit corporations' rights to interfere "with the existence and flourishing of natural communities or ecosystems" (Tamaqua Borough 2006, sec. 7.6). The ordinance treats RoN as a tool for strengthening community rights vis-à-vis corporate property rights. Because it is easier to legally prove harm to an ecosystem than to the health of a particular person, RoN provisions theoretically make it easier for citizens to challenge corporations in court.

CELDF has since worked with communities across the United States to pass similar ordinances (discussed in chapter 7). Many of these are designed to prevent environmental damage caused by fracking. CELDF's approach is novel because it takes environmental protection out of the regulatory realm and moves it to the legal realm, where fracking can be banned as a violation of the rights of communities and Nature. It remains unclear, however, as to whether the legal standing of local RoN ordinances will be recognized by the courts. By 2019, three ecosystems had taken legal action to protect themselves, and all were challenged (Jamail 2017).

ECUADOR'S RIGHTS OF NATURE LAWS

Ecuador's constitutional RoN provisions resulted from changes in the political opportunity structure created in 2006 when Rafael Correa was elected president. After a decade of extreme political and economic instability, Correa rose to power on the promise to fundamentally remake Ecuador's political and economic system. He was supported by a loose collection of leftist academics, Indigenous people, and other social movement activists united by their opposition to neoliberal economics and seeking to implement a post-neoliberal development approach (Becker

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2013, Radcliffe 2012). A key step was rewriting the country's constitution in 2007.

The process of writing Ecuador's new constitution was remarkably participatory. Civil society submitted over three thousand proposals, which were considered by the Constituent Assembly of Ecuador (Greene 2015). This process provided a window of opportunity for Indigenous, campesino, and environmental groups who had long fought to protect their communities from the environmental damage caused by industrial extractivism and other neoliberal economic policies. Within the Constituent Assembly they sought to ban extractivism and replace it with an alternative development approach that recognized the intrinsic value of Nature and provided for human well-being by ensuring the well-being of the larger biotic community. To this end, various lawyers, activists, and scholars proposed recognizing RoN.

Due to their place in Correa's coalition, Ecuadorian Indigenous movements had a substantial influence on the constitution and shaped the framing of RoN (Becker 2013). Ecuador's constitution pledges to build a new form of sustainable development based on the Andean Indigenous concept of *sumak kawsay* (translated into Spanish as *buen vivir*, "good living"), which is rooted in the idea of living in harmony with Nature (Chuji 2014, Eisenstadt and West 2019; Oviedo 2014).

Consequently, the preamble defines Nature as Pachamama and presents a guiding principle for the new development approach: that humans are part of Nature, and thus Nature is a vital part of human existence. Ecuador's constitution presents *buen vivir* as a set of rights for humans, communities, and Nature, and portrays RoN as a tool for achieving a post-neoliberal development model rooted in the concept of *sumak kawsay*. This framing explains the expansive definition of Nature, the focus on maintaining balance and equilibrium within the larger biotic community, the recognition of human impacts on Nature, and the obligation to offset human impacts through restoration.

RoN have been recognized in a number of court cases and secondary laws, including the 2014 Ecuadorian Penal Code (see chapter 4). While constitutional RoN provisions have not ended extractivism in the country, RoN jurisprudence has gradually strengthened over the last decade and RoN has been invoked successfully to prevent specific instances of

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mining, protect endangered species, and force some development projects to be more ecologically sustainable (see chapter 4). Ecuador illustrates the outcome of years of norm development and a distinct application at the national level forged through contestation, adaptation, and evolution through court rulings.

NEW ZEALAND'S RIGHTS OF NATURE LAWS

New Zealand demonstrates a third, distinct path to institutionalizing RoN. New Zealand's RoN laws emerged through the process of resolving longstanding treaty disputes between New Zealand's Crown government and Māori iwi. In 1840, New Zealand's government signed the Treaty of Waitangi with about five hundred Māori chiefs from the North Island to establish British sovereignty over the island. Over succeeding decades, Māori iwi lost control of much of their lands and were subjected to extremely unfair treatment. During the 1960s and 1970s, New Zealand underwent a "Māori renaissance," including a strong Māori protest movement demanding redress for treaty violations and the ability for Māori iwi to protect and manage their ancestral territories. In the 1990s the government began negotiating settlements of historical claims with individual iwi.

Treaty settlements opened a window of opportunity for codifying Māori conceptions of Nature, which are consistent with Earth Jurisprudence principles, into New Zealand law. Iwi trace their ancestral lineage to a common ecosystem, which they view as a living, spiritual being. Māori generally do not emphasize the concept of rights, since they do not conceptualize Nature as property. Rather, they emphasize the concept of guardianship resulting from their duty to care for their ancestor. Consequently, both the substance and framing of New Zealand's RoN laws are different from those in Ecuador and the United States.

New Zealand's two existing RoN laws resulted from treaty settlements with two iwi: the Whanganui iwi, regarding Te Awa Tupua, and the Tūhoe iwi, regarding Te Urewera. The same Crown negotiators and lawyers worked on both settlement processes simultaneously (an unusual circumstance), which allowed learning and the diffusion of ideas across the two negotiations. In both cases, granting Nature legal personhood

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was conceived as a strategic tool for overcoming unique obstacles that had caused negotiations to break down. Because RoN is based on Earth Jurisprudence principles (as described in chapter 1), and Earth Jurisprudence is consistent with Māori conceptions of humans' relationship with Nature, RoN was seen as an acceptable, if not ideal, legal mechanism for translating Māori concepts into Western law. Chapter 6 shows what this looks like in practice.

The idea to grant Nature legal personhood arose first in the Whanganui negotiations.[3] After talks stalled in 2004, Whanganui negotiators decided on a new approach: rather than demanding ownership, the iwi agreed that its main goal was to have the Crown recognize and treat Te Awa Tupua according to the Māori view—as a whole, living, spiritual being.[4] Among other things, this required treating the river at a catchment-wide level, but this conflicted with the Crown's fragmented regulatory framework under the Resource Management Act. Moreover, since the health and well-being of the river was not good, the outcome also had to provide a way to improve it.[5]

In thinking about how to resolve this dilemma, Ambassador John Wood, the chief Crown negotiator for the Te Awa Tupua and Te Urewera settlements, was inspired by the writings of nineteenth-century New Zealand constitutional scholar Sir John Salmond on the concept of legal fiction.[6] While Salmond applied the concept of legal fiction to corporations (i.e., treating corporations as if they were persons), Wood and other members of the Crown negotiating team began thinking about how to creatively apply the concept to an ecosystem like a forest. Because some Crown lawyers working on the settlements specialized in biodiversity law, they were familiar with writings on RoN by Christopher Stone and other US legal scholars. According to Minister for Treaty of Waitangi Negotiations Christopher Finlayson, these writings helped shape the eventual solution.[7]

The Crown negotiating team realized that granting the river legal personhood might provide a legal mechanism for meeting the Whanganui iwi's desire to recognize the river as a whole, living, spiritual being. The river, like any person, could then be legally required to follow the Resource Management Act. In this way, legal personhood could provide a way to meet both sides' seemingly contradictory bottom lines.

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As this idea was germinating, the Tūhoe settlement process progressed more rapidly, and the Crown negotiating team imported its ideas about legal personhood to the treaty negotiations. We provide more detailed analysis of the Tūhoe process and settlement in chapter 6, but the important point here is that the negotiations had initially dealt with the Tūhoe demand for return of Te Urewera, which the Crown interpreted as a conflict over title and ownership. Te Urewera's status as a national park greatly complicated the settlement process. Non-Māori New Zealanders (Pākehā) are famously proud and protective of their national parks, and for a time the government took negotiation of national park land off the table.

A breakthrough came in 2011 when Crown negotiators realized that the Tūhoe iwi's demand for the return of Te Urewera did not necessarily mean the Tūhoe needed to legally own it (i.e., have title). In the Tūhoe worldview, one cannot truly own Nature, and the iwi never specifically asked for ownership. Rather, it asked for the return of the land, which Tūhoe do not equate with ownership.[8] Ambassador Wood realized a political solution would require that neither the Crown nor the Tūhoe own the land. If Te Urewera was granted legal personhood, ownership of the land could be vested in Te Urewera itself. Then the Crown could say it was not transferring ownership to the Māori, and the Māori could say the Crown did not own the land. Tūhoe negotiators accepted legal personhood for Te Urewera as an imperfect approximation of recognizing the forest as a whole, living, spiritual being, but likely the best possibility within a European legal framework.

According to Wood, "Once we accepted the idea of Te Urewera owning itself, [the next issue in the negotiations] was how do we exercise responsibility toward it. How is it going to be governed? Who is going to speak for it? Its rights and responsibilities as a legal person—these are things to be negotiated."[9] These negotiations opened a window of opportunity for codifying Māori conceptions of Nature, and humans' responsibility to it, into New Zealand law.

The Tūhoe and Whanganui iwi, like all Māori, trace their ancestral lineage to a common ecosystem, which they view as a living, spiritual being. Māori do not emphasize the rights of Nature concept, since "rights" is a foreign concept stemming from the European legal system. Rather, Māori iwi emphasize their responsibility of guardianship (*kaitiakitanga*) for the

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land to which their iwi has kinship ties.[10] Their focus is their responsibility to care for their ancestor in order to maintain their ties to it.

For this reason, both Māori and Crown negotiators assert that the most important parts of the Te Urewera Act and Te Awa Tupua Act are not the legal personhood provisions but the related guardianship and governance arrangements. For example, Te Awa Tupua's guardian body is composed of one Whanganui iwi representative and one Crown representative. Notably, guardians must secure Te Awa Tupua's spiritual and cultural rights, not simply its physical and ecological rights. An advisory group, Te Karewao, was created to provide advice and administrative support to the guardians (New Zealand Parliamentary Counsel Office 2017, secs. 27–28). This advisory group comprises three people appointed by groups with interests in the river other than the Whanganui iwi (e.g., the local government and other iwi).

A key feature of Te Awa Tupua's guardianship-based approach is that it embeds the guardians within a new, collaborative, integrated watershed management body, Te Kōpuka nā Te Awa Tupua, comprising various stakeholders with interests in the river, including multiple iwi, central and local governments, commercial actors, recreational users, and environmental groups. It is charged with developing an integrated watershed management strategy to ensure the environmental, social, cultural, and economic health and well-being of Te Awa Tupua. The group is also responsible for monitoring the management plan's implementation and providing a forum for discussing issues related to the health and well-being of the river.

From the perspective of protecting RoN, this management body is arguably the most important element of the Te Awa Tupua Act. As a legal person, the river itself is a member of the integrated watershed management body (via its guardians), and thus participates directly in watershed management decisions. Moreover, the body is obliged to make decisions with "particular regard to the Te Awa Tupua status" and its intrinsic values (New Zealand Parliamentary Counsel Office 2017, sec. 30, clause 3).

The fact that New Zealand's legal personhood provisions emerged as a tool to satisfy the contradictory interests of Māori iwi and New Zealand government explains why the legal sections recognizing legal personhood do not elaborate specific rights but rather emphasize the river's physical and metaphysical characteristics. The definition of the river ecosystem is

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also consistent with the scientific understanding of ecosystems as biotic communities that include humans. For example, sections 12 and 13 of the Te Awa Tupua Act state that

> Te Awa Tupua is an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements. . . .
>
> Te Awa Tupua is a spiritual and physical entity that supports and sustains both the life and natural resources within the Whanganui River and the health and well-being of the iwi, hapū, and other communities of the River. . . .
>
> The iwi and hapū of the Whanganui River have an inalienable connection with, and responsibility to, Te Awa Tupua and its health and well-being. . . .
>
> Te Awa Tupua is a singular entity comprised of many elements and communities, working collaboratively for the common purpose of the health and well-being of Te Awa Tupua. (New Zealand Parliamentary Counsel Office 2017)

In both of the New Zealand acts, the legal personhood language is expressly intended to overcome contentious issues of ownership and reflect the Māori iwi view that their respective ecosystems are living entities with intrinsic value that are incapable of being "owned" in an absolute sense. Because of this Māori framing, the emphasis is on responsibility through guardianship rather than rights.

CHAPTER SUMMARY

This chapter highlights a puzzle discussed in chapter 1 that is presented by these early RoN cases: Given the similar timing of early RoN laws (which usually suggests diffusion of a common model), why do they express RoN so differently? The United States, Ecuadorian, and New Zealand cases tell a common overall story. Indigenous and non-Indigenous local communities, concerned with the degradation of local ecosystems on which they depend, searched for new legal tools to expand their authority to protect these ecosystems. Given the inadequacy of existing legal frameworks, these communities sought new laws that strengthened their legal standing to protect Nature, ultimately producing RoN laws. Through accumulation, individual community efforts to address unique local problems regarding natural resource management contributed to the emergence of nascent RoN and Earth Jurisprudence norms circulating globally.

Yet despite the existence of such nascent global RoN and Earth Jurisprudence norms, early RoN laws emerged from independent processes

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strongly rooted in domestic conditions. The need to adapt to local contexts explains why RoN was framed and constructed differently in various countries. We identify three important domestic contextual differences: (1) the openness of national political opportunity structures (which explains the type of legal provision adopted); (2) the types of organizations and sociopolitical alliance structures driving the process, and (3) the belief systems determining which cultural framings were most salient and effective for mobilizing support. Together these factors shaped how RoN was contested and expressed institutionally.

In the United States, a closed opportunity structure forced advocates to pursue relatively weak local ordinances. RoN is linked to the concepts of community rights and democracy, and is seen as a tool that communities can use to protect themselves from the vagaries of corporate property rights. In Ecuador, the writing of a new constitution and Indigenous groups' membership in the governing coalition provided an opportunity to create strong RoN laws that are framed as a tool for realizing a postneoliberal development model rooted in the Andean Indigenous concept *sumak kawsay*. In New Zealand, the treaty settlement process created an opportunity to codify Māori concepts of humans' relationship to Nature, which is consistent with Earth Jurisprudence. Consequently, the concept of rights is downplayed in favor of the Māori concepts of guardianship and responsibility to care for natural entities (*kaitiakitanga*). One lesson from these cases is that there is no single best pathway or model for legally recognizing RoN. The best path and model is determined by local context and realized through experimentation, contestation, learning, and adaptation.

Finally, our chapter explains why early RoN laws differ on fundamental normative questions like how Nature is defined, which rights should be recognized, when human activities constitute violations of Nature's rights, and whether to prioritize rights or responsibilities. In so doing it contributes to the literature on norm construction. The chapter shows how distinct processes of norm construction in different countries imbue emerging norms with different content, setting the stage for international norm contestation. The next five chapters continue our analysis of norm construction by examining how these RoN laws are being put into practice, and in so doing how they shape the evolution of RoN jurisprudence.

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THE EVOLUTION OF RIGHTS OF NATURE THROUGH THE ECUADORIAN COURTS

For over a decade, environmental activists have celebrated the audacious move to include rights of Nature (RoN) in the 2008 Constitution of the Republic of Ecuador. As we discussed in chapter 3, Ecuador's constitution presents *buen vivir* ("good living," the Spanish translation for the Andean Indigenous concept *sumak kawsay*) as a set of rights for humans, communities, and Nature and portrays RoN as a tool for achieving an alternative model of sustainable development that challenges dominant neoliberal approaches. This chapter examines the evolution of RoN in Ecuador, the world's first country to recognize Nature's constitutional rights.[1] In doing so it illustrates the politics of implementation in RoN systems that follow the Nature's rights model. Given Ecuador's influence on international RoN mobilization, we argue that explaining variation in the application of Ecuador's RoN laws over time has value for understanding the strategies, pathways, and processes through which emerging global counternorms strengthen.

Ecuador's RoN provisions resulted from the activism of a diverse array of Indigenous, environmental, and leftist organizations who ascribe different meanings to *buen vivir* (Aidoo et al. 2017; Gudynas 2015; Radcliffe 2012).[2] *Buen vivir* therefore represents a variety of discursive and practice-related "platforms" for considering and practicing alternative visions of development (Gudynas 2011). Consequently, its implementation has

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varied widely, from natural resource extraction in biologically sensitive protected areas in order to finance poverty reduction policies (e.g., Yasuní National Park), to supporting communities' and Nature's rights against agro-industry and extractivism. By analyzing the dynamics of contestation surrounding the application of RoN in Ecuador, this chapter provides new insight into the struggles to construct post-neoliberal development within the global market system.

Contestation over RoN quickly escalated after the constitution's signing in 2008. These rights immediately conflicted with the Ecuadorian government's plans to expand large-scale mining and oil extraction to finance development projects. Numerous lawsuits were filed to protect Nature's rights, including protecting them from economic development projects. Given the state's plan to fuel economic growth through increased extractivism, even in fragile and protected ecological areas, Ecuador illustrates the difficulties of implementing RoN. Herein we present a conceptual framework for understanding the tools and pathways through which Ecuador's RoN are applied in practice and the reasons why these rights are upheld in some cases and not others.

We describe below five legal tools used to implement RoN and then compare thirty-eight attempts to apply these tools through one of four pathways: (1) norm-driven civil society pressure, (2) instrumental government and private action, (3) bureaucratic institutionalization, and (4) professional interpretation by judges. We use this framework to explore key questions with global ramifications: Given that Ecuador's constitutional RoN has not eliminated new large-scale extractive projects, does it still matter, and if so, how? And what lessons does Ecuador's experience have for those working to implement RoN legislation elsewhere?

Our findings, based on case analysis from 2008 to 2020, reveal some unexpected pathways of influence and suggest that the pathways channeling efforts to apply RoN influence the prospects for success. Contrary to our expectations (based on the norms literature), civil society pressure was the least successful pathway in the early stages of RoN development (2009–2015). We will describe how civil society efforts became more successful in later stages (2016–2020) following the strengthening of RoN jurisprudence in the courts. By 2019, civil society had become the most prolific and successful pathway. But initially RoN activists faced two

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main obstacles: (1) the politicization that inevitably occurs around norm contests, and (2) judges' initial lack of knowledge about how to interpret RoN. Activists lost early high-profile lawsuits; before 2018, they succeeded only by working "below the radar" (Gash 2015) on local cases that did not directly challenge the state's development agenda. Lower-level judges became more familiar with constitutional RoN provisions and began to apply them in their rulings, creating a foundation that allowed RoN jurisprudence to develop.

Despite initial failure inside the courts, we argue that highly politicized civil society pressure outside the courts contributed indirectly to judicial momentum in the early years of RoN application. Antimining activists used Ecuador's RoN constitutional provisions as a tool for mobilizing society and shaming the government. As a result, the government invoked RoN to justify and legitimize its development agenda. While the state often invoked RoN instrumentally (producing positions that appear hypocritical to many), it invariably won. The result was to build precedent and raise awareness of RoN among judges, setting the stage for civil society's subsequent success in the courts, including cases in which RoN was used to block mining and oil projects. These latter cases were also facilitated by judicial reforms widely seen as enhancing courts' independence from the executive branch.

One of our most interesting findings is the significant role of judges in the strengthening and evolution of RoN jurisprudence inside Ecuador. Our interviews suggest this has occurred not because judges are RoN advocates but because most feel a professional responsibility to interpret and apply the constitution in its entirety. Early on, a handful of judges knowledgeable about RoN applied it unilaterally in their sentencing in cases where neither claimants nor defendants had invoked it. Again, these cases tended to be lower-profile cases related to local infrastructure or agro-industry, as in the biodigester case discussed herein. When the state later invoked RoN in high-profile cases related to mining it always won, further expanding and strengthening RoN jurisprudence. This early application of RoN between 2009 and 2015 created a foundation of RoN jurisprudence on which judges have based later rulings.

Over the course of the decade, judicial thinking in Ecuadorian courts gradually and naturally evolved as they were forced to apply the legal

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principles to an increasing number of situations. By 2019, judges were applying RoN as a tool for sustainable development, including using it to ban state-sanctioned mining operations—something unheard of in the early years of Ecuadorian RoN. This dramatic change highlights the strengthening and evolution of RoN jurisprudence by Ecuadorian judges.

As RoN jurisprudence strengthened in the courts, local communities and subnational governments began to invoke RoN as a tool for preventing oil extraction and mining in their territories. This strategy has received some traction in the courts, as shown in the Constitutional Court of Ecuador's opinion on a request by Azuay Province to hold a referendum to ban mining. This linking of community rights and RoN is another way in which Ecuador's experience has broader relevance. Local control and application of RoN, as we note throughout this book, is a tension point for communities, and particularly those in Ecuador and the United States that are opposing extractive processes at subnational levels. Ecuadorian judges are leading the way in rethinking the relationship between community rights, RoN, and citizen participation in decisions regarding natural resources amid the onset of climate change.

POSTCONSTITUTION POLITICS CHANNELING RIGHTS OF NATURE THROUGH THE COURTS

Once Ecuador's constitution passed in 2008, attention turned to creating the secondary laws and institutions needed to give form to constitutional principles. President Rafael Correa immediately launched a public campaign to pass a mining law that greatly expanded existing mining operations and initiated new sites. Correa argued that the state could ensure socially and environmentally responsible mining practices. Moreover, profits from mining and oil extraction were necessary to develop a post-fossil-fuel energy sector, reduce poverty, and expand access to education, health care, and other public goods. For Ecuador's government, these goals constituted *buen vivir*.

Indigenous and environmental activists fiercely criticized the law, saying it violated both RoN and the constitutional rights of Indigenous communities to prior consultation. They accused the government of co-opting and twisting the meaning of *buen vivir*. Correa responded by

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calling them "childish environmentalists" (quoted in Dosh 2009, 22). Passage of the Mining Law in January 2009 prompted tens of thousands of Indigenous, community-rights, and environmental activists to protest nationwide. Tensions reached a boiling point in September 2009 after the government proposed a water law that opponents argued similarly violated constitutional RoN and Indigenous rights. Ecuador's government cracked down, and by 2011 had arrested nearly two hundred Indigenous leaders, charged with terrorism for protesting mining activities (*EFE* 2011). The government also closed several organizations leading the protests, including the Development Council of Indigenous Nationalities and Peoples of Ecuador and the environmental nongovernmental organizations (NGOs) Acción Ecológica and Fundación Pachamama.[3]

Given the state's priority on exploiting natural resources to fuel social development, the government postponed creating the secondary laws and institutions needed to strengthen and give form to constitutional RoN principles.[4] Environmental lawyers and activists drafted a secondary RoN law, but decided not to submit it to the National Assembly given the hostile political context and their fear that this would provide an opportunity for legislators to restrict the constitution's RoN provisions.[5] Consequently, early efforts to apply RoN in Ecuador occurred in a highly politicized context, with relatively little institutional structure beyond general constitutional principles.

As of early 2021, Ecuador's constitutional RoN provisions have still not been fleshed out adequately through secondary laws. Two Ecuadorian laws mention RoN: the 2014 Penal Code and the 2018 Environmental Code. But in both situations, the concept of RoN is not fully developed. For example, the Penal Code does not delineate the standards for determining a crime against RoN, but rather gives discretion to the Ministry of Environment. The 2018 Environmental Code is similarly weak in that it does not give content to RoN, nor does it regulate RoN—to the point that article 6 says that the ministry will set technical guidelines on ecosystem cycles.

Essentially, the Environmental Code gives the Ministry of Environment the authority to regulate a constitutional right, something the constitution says the legislature must do. Nevertheless, application has been deferred to executive-appointed ministry regulators who have failed to establish detailed regulations. Consequently, it has fallen primarily to

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judges to fill in the gaps of RoN legal and normative applications—an unusual situation given Ecuador's civil law system. Despite the civil law system, the lack of clear secondary RoN laws greatly empowered judges and prompted them to consider judicial precedent, spurring the evolution of RoN jurisprudence. As we show herein, activists strategically used the law as a tool, and judges gradually but steadily strengthened and expanded the enforcement of RoN, with important consequences for the future of sustainable development in Ecuador.

ECUADOR'S COURT AND LEGAL SYSTEMS

Ecuador's court system is divided into two parts: the ordinary judicial system, which addresses civil and criminal law, and the jurisdictional system, which addresses constitutional law. Most proceedings begin in local-level courts called first-instance courts. Provincial Courts are second instance courts that serve as appellate courts for first-instance matters. Each Provincial Court is internally divided into specialized chambers for different branches of law (e.g., civil law and criminal law). The National Court of Justice is the highest body of the judiciary and serves as the main judicial institution that hears cases of cassation and revision of appeals for the ordinary judicial system. The Constitutional Court is the highest court in the jurisdictional system and is the final arbiter on constitutional questions, including the interpretation of RoN and its relationship to other constitutional rights.

The Defensoría del Pueblo is a government ombudsman's office designed to protect human rights and RoN. Communities and individuals can report RoN violations, and the Defensoría del Pueblo will investigate and document the case. In 2015 the government ordered all allegations of RoN violations to be channeled through the Defensoría del Pueblo. This decision is controversial, since the Defensoría del Pueblo has no legal enforcement authority and the constitution states that any citizen can represent Nature in court. Various cases in this chapter originated with the Defensoría del Pueblo.

Some cases in this study are from the Galapagos Islands, an Ecuadorian province with special legal status. Article 258 of Ecuador's constitution

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specifies the province's role in protecting the principles of patrimonial conservation through the concept of *buen vivir* / *sumak kawsay*. Article 3 of the Special Law of the Province of Galapagos outlines principles for governing the islands. These include "an equilibrium among the society, the economy, and nature; cautionary measures to limit risks; respect for the rights of nature; restoration in cases of damage; and citizen participation" (Republic of Ecuador 2015). Article 20 of the Special Law also defines the unique role of the Galapagos National Park, which represents the state and Nature in all lawsuits dealing with RoN in criminal and civil matters. Within this park system is a marine protected area (MPA), extending 40 mi outside the islands. This MPA has another set of special laws that surround it, including those prohibiting long line and commercial fishing.

Finally, the Galapagos Islands have a revised governing structure created in 2014 that includes a government council composed of Ecuador's president, a technical secretary, the minister of environment, the minister of tourism, the minister of agriculture and fishing, the director of national planning, the mayors of each Galapagos canton, and a permanent representative of the president from the rural Galapagos cantons. Prior to 2014 the conservation sector (comprising various environmental NGOs and scientific teams) had one vote on policy making in the MPA. While this is no longer the case, this group played a key role in some cases described herein.

LEGAL TOOLS FOR PROTECTING RIGHTS OF NATURE

We identified five legal tools through which RoN is applied in Ecuador. The first are secondary laws, including the 2014 Penal Code and 2018 Environmental Code, which do not sufficiently establish standards for enforcing RoN. Consequently, RoN in Ecuador is primarily applied through three types of lawsuits (constituting three of the five "tools"). The first two involve lawsuits seeking protection of RoN guaranteed in the constitution and the Organic Law of Jurisdictional Guarantees and Constitutional Control. These constitutional lawsuits (processed through civil and constitutional courts) ask that damaged ecosystems be restored (a form of restitution for Nature) and/or that preventive action be taken

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to avert expected future violations. The most common constitutional lawsuits are those requesting "protective action" to uphold RoN. Other constitutional lawsuits seek to overturn laws and executive orders that violate the constitution's RoN clauses.

Criminal lawsuits provide a fourth legal tool that became possible in 2014 with the passage of Ecuador's Penal Code. Chapter 4 of the Penal Code specifies various "crimes against the environment, nature or Pachamama," including crimes against biodiversity and against natural resources, including water, soil, and air. Criminal lawsuits seek punishment for such crimes and are processed through criminal courts. Unlike constitutional lawsuits, which seek restorative justice by restoring ecosystems, criminal lawsuits seek punishment of guilty parties.

The fifth tool is not a lawsuit, but rather administrative action by a government agency to uphold RoN. For example, the Ministry of Environment has invoked RoN to justify punitive action (e.g., fines, removal of licenses, and eviction of companies from ecological reserves) and restoration of damaged ecosystems. Its regulatory power has expanded since the 2018 Environmental Code was created.

CASES AND PATHWAYS

We identified thirty-eight cases where the above legal tools were used to try to protect RoN from 2008 to 2020. In several cases, lawsuits were combined with administrative action. Table 4.1 summarizes these cases and identifies whether or not RoN was successfully applied (i.e., a judge upheld RoN or the government implemented an administrative action to protect RoN). Of the thirty-eight cases, thirty-one efforts succeeded and seven failed.

Besides the legislative actions producing the two secondary RoN laws (the Penal Code and Environmental Code), we identified four remaining pathways for implementing RoN in Ecuador: (1) civil society pressure, (2) application by the juridical epistemic community (i.e., judges), (3) instrumental action by government and private corporations, and (4) bureaucratic institutionalization. These pathways differ not only by the type of actor but also by motivation. Civil society actors were motivated by

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Table 4.1 Ecuador's Rights of Nature cases 2008–2020

Pathway	# of Cases	Legal Tool	% Successful
Civil society (norm driven)	20	19 protective actions; 1 challenge to law's constitutionality	65% (13 of 20 cases)
Instrumental government and corporate action (interest driven)	5	4 protective actions; 1 criminal lawsuit	100% (5 of 5 cases)
Bureaucratic routine (rule driven)	8	8 administrative actions (6 combined with lawsuits—1 protective action; 5 criminal lawsuits)	100% (8 of 8 cases)
Juridical epistemic community (professional standards driven)	3	3 protective actions	100% (3 of 3 cases)
Legislative action	2	2 secondary laws (Penal and Environmental Codes)	100% (2 of 2 cases)
Total	38	2 secondary laws; 26 protective actions; 1 administrative action plus protective action; 5 administrative actions plus criminal lawsuits; 2 administrative actions only; 1 criminal lawsuit only; 1 challenge to constitutionality of a law	Protective actions, 77%; challenge to the constitutionality of a law, 0%; administrative actions,100%; criminal lawsuits, 100%; legislative action, 100%

normative principles and invoked these in their struggle to protect Nature. As one might expect, President Correa's office acted instrumentally, invoking RoN when it served its purpose and ignoring RoN when it challenged government policies. Consequently, government positions appear somewhat hypocritical, particularly on mining. We also identified an unexpected case where a private oil company invoked RoN to serve its purpose, further illustrating instrumental use by actors normally seen as hostile to RoN.

At other times, however, government agencies like the Ministry of Environment and Galapagos National Park invoked RoN to justify routine bureaucratic actions that predated RoN laws and which could have been

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justified through other regulations. This pathway is important because the incorporation of norms into routine bureaucratic policies and practices is thought to be crucial for norm adoption, since it leads to the internalization of norms through habituation. The incorporation of new norms like RoN into routine bureaucratic procedures can signal the beginning of a transition from the first stage of a norm's life cycle (emergence) to the internalization phase (Finnemore and Sikkink 1998). Some legal scholars note, however, that empowering the Ministry of Environment to develop regulations for constitutional rights like RoN can produce arbitrary and uneven application of such rights.[6]

Judges' actions were often neither normative nor instrumental, but rather rooted in the routine application of law. RoN jurisprudence is being developed in Ecuador by judges who did not identify as environmentalists in interviews (indeed, most expressed a lack of knowledge regarding RoN) and who did not invoke normative arguments regarding Nature in their rulings. Rather, they expressed a professional responsibility to interpret and apply constitutional law in its entirety to the best of their ability.

Of the thirty-eight RoN cases, twenty originated from civil society. All seven failed cases were civil society cases. Many of these were early civil society attempts to protect RoN in the first years after the constitution was adopted. During 2016–2020, however, twelve civil society cases were filed. Only two of those cases have failed to date. The remainder succeeded in lower courts, and appealed cases were upheld or are being considered by the Constitutional Court. These numbers demonstrate the sea change in Ecuador since 2008 and the strengthening of RoN norms as civil society and judges reflect on, learn, experiment with, and apply RoN. We analyze the forces behind this sea change in the case studies below.

The following five sections analyze these pathways and the interactions among them. We discuss each pathway in roughly the chronological order that they appear, acknowledging a great deal of overlap among the pathways. We analyze the civil society pathway in two parts, distinguishing between early and later attempts. We do so to highlight changes in civil society strategies in response to changing conditions and to better show how the interactions among the pathways create new opportunities for applying and strengthening RoN over time.

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NORM-DRIVEN CIVIL SOCIETY PRESSURE, PART 1: 2009–2015

Given the passage of constitutional RoN provisions in 2008, Indigenous movements and environmental NGOs were initially optimistic that Ecuador was turning away from extractivist-based development.[7] These hopes were dashed when the government passed the 2009 Mining Law and moved quickly to expand industrial mining. Eager to protect the gains they had made, civil society activists invoked the constitution's RoN provisions to challenge the government's extractivist development agenda through lawsuits for protective action.

Civil society launched eight RoN lawsuits between 2009 and 2015. Only three of these early lawsuits succeeded, and five failed. Two factors likely explain the failures and constitute the principle obstacles to implementing RoN in the initial years of its development. First, the contentious relationship between RoN activists and the Correa government meant some lawsuits were highly politicized. Ecuadorian legal scholars note that judicial sentences consequently focused on navigating the politicized environment rather than on implementing the specifics of the law.[8] Second, most lawyers and judges simply lacked knowledge of RoN and how to interpret it. The idea that individual and corporate property rights must be curtailed in some cases to uphold Nature's rights was not only foreign to most judges but ran counter to their legal training. As a result, judges in civil society lawsuits initially ruled that economic development activities are protected by individual rights (e.g., property rights, the right to work) that supersede Nature's rights.

THE CONDOR-MIRADOR LAWSUIT

The Condor-Mirador lawsuit illustrates the problems of politicization and early lack of knowledge. In 2010, Indigenous and environmental activists realized the political situation would not allow them to strengthen RoN through secondary laws. They therefore tried to strengthen RoN by establishing case precedent. After spending two years searching for the perfect case—a high-profile one involving a clear, unambiguous, large-scale violation—RoN activists decided on the Condor-Mirador open-pit mining project.

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In March 2012 the Ecuadorian government signed a contract with the Chinese-owned mining company Ecuacorriente to establish the country's first, large-scale, open-pit mining project in a sector of the Amazonian province Zamora-Chinchipe known as Condor-Mirador. The mining concessions cover 38 sq mi and will include an open-pit mine expected to measure 2.5 mi in diameter and 0.7 mi in depth (Sacher 2011, 6). The project's environmental impacts are particularly problematic because it exists in one of the most biodiverse areas of the planet, one that is home to several endangered endemic species, and particularly some amphibians that are close to extinction. The project is also located in the watersheds for two rivers used for irrigation and consumption and which constitute habitat for various animal and plant species.

The mining company's own environmental impact study acknowledged that the open-pit mine would cause impacts listed as RoN violations in the constitution. These include the total removal of ecosystems, including the habitats on which endangered endemic species rely, likely causing the extinction of one or more species (Thurber and Noboa 2010, PDF 374). Additionally, contaminating surface and groundwater with heavy metals and other toxins would be catastrophic for surrounding watershed ecosystems (Sacher 2011, 16–17). Article 73 of Ecuador's constitution explicitly requires the state to "apply preventive and restrictive measures on activities that might lead to the extinction of species, the destruction of ecosystems and permanent alteration of natural cycles" (Republic of Ecuador 2008). Moreover, the constitution clearly establishes the precautionary principle; activities likely to produce these outcomes must be stopped and redesigned. RoN activists therefore saw Condor-Mirador as a promising case for creating RoN jurisprudence.

In January 2013 a collection of Indigenous movements, environmental and human rights NGOs, and communities near the mine jointly filed a constitutional lawsuit for protective action to the Twenty-Fifth Civil Court in Pichincha Province.[9] The defendants included Ecuacorriente and the Ministry of Non-Renewable Natural Resources for signing the mining contract, and the Ministry of Environment for granting an environmental license. The lawsuit alleged that these actions constituted RoN violations since scientific studies showed the mining project would likely produce environmental impacts explicitly prohibited in the constitution

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(e.g., destruction of whole ecosystems, extinction of species, and degradation of water ecosystems, which enjoy special protection due to water being a precondition for life).[10] The suit also noted articles in the constitution and the Organic Law of Jurisdictional Guarantees and Constitutional Control that require the state to take preventive action against potential RoN violations, even amid uncertainty. The suit asked the court to suspend the Condor-Mirador project and order a new environmental impact study that would address impacts on the project's drainage into watersheds.

The judge ruled that the Condor-Mirador project did not violate RoN for two principle reasons, both of which reflect questionable and controversial interpretations of the constitution's RoN clauses. First, the judge ruled that since the mining project would not affect a protected area, the environmental damage would not violate RoN.[11] Activists criticized this argument because the constitution clearly states that all Nature—not just Nature found in protected areas—has rights. The court essentially ruled that because the mining company received an environmental license, no RoN violation occurred (equating RoN with the normal environmental regulatory process). The judge also argued that civil society's efforts to protect Nature constituted a private goal, while Ecuacorriente (a private company) was acting in favor of a public interest—namely, development. Ruling that the public interest takes precedent over a private interest, the judge ruled against the claimants. Putting aside the perverse logic of this argument, it contradicts the constitutional principle that Nature's rights are both autonomous of societal interests and of equal value.

Civil society representatives appealed the decision in the Provincial Court of Pichincha but lost. They blamed their loss on a lack of judicial independence. Their allegation is supported by a 2010 memorandum circulated among judges by Alex Mera, President Correa's legal secretary. The memorandum decries the "illegitimate abuse of protective action provided for in the Constitution" to challenge public works projects, which "has meant a grave setback against placing the general interest over particular interests." Arguing that "this situation has meant an enormous opportunity cost for the country," the memorandum presents instructions from President Correa that any judge approving a preventive action against a state project must personally reimburse the state for "damages

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and harm" incurred as a result of suspending the project (Mera 2010, in possession of the authors). Government bureaucrats would determine the amount of damages owed.

Concluding that they would never get a fair ruling under the current government, RoN activists chose not to appeal the Condor-Mirador case to the Constitutional Court. Many RoN activists decided not to bring more lawsuits in Ecuador for fear of establishing negative jurisprudence that could weaken the gains made in the constitution. They focused instead on mobilizing support for RoN within Ecuadorian society.

Some Ecuadorian environmental lawyers disagree that the main problem is a lack of judicial independence.[12] Rather, they say most judges, especially in the early years of the new constitution, did not understand RoN and did not know how to interpret them or balance them against other constitutional rights. The lawsuit for protective action against a pine tree plantation in the *páramos* of Tangabana illustrates this problem.[13]

THE TANGABANA CASE

The Tangabana case relates to a 200-ha monoculture plantation established by the private company ERVIC with funding from Ecuador's Ministry of Agriculture, Livestock, Aquaculture, and Fisheries (through a reforestation program meant to increase carbon sequestration). ERVIC's owner, retired military captain Carlos Rhor Romeno, extended the plantation beyond his property into *páramos* collectively owned by a local Indigenous community. Community members were concerned because the *páramos* serve as the catchment area for their watershed. Pine trees are notorious for consuming a lot of water and known to seriously degrade the hydrological flow in *páramo* ecosystems. For this reason, Ecuador's Ministry of Environment prohibits reforestation projects in native *páramos*.[14] Community members turned to the environmental NGO Acción Ecológica for help. While the NGO feared bringing another suit after Condor-Mirador, it took a risk. Since government policy prioritized protecting *páramo* ecosystems, Acción Ecológica saw this as a chance to create positive RoN jurisprudence through a case that did not directly challenge the government's extractivist agenda and thus would sidestep the political conflicts associated with the agenda.

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In November 2014 a collection of RoN activists (represented by YASunidos Chimborazo and Acción Ecológica) and the community's pastorate filed a lawsuit for protective action in the Judicial Court of Colta (a canton in Chimborazo Province). The judge ruled against the claimants on procedural grounds. The ruling demonstrates the judge's lack of understanding of RoN. First, he noted that the claimants did not own the affected land (community members were not signatories to the suit due to fear of intimidation from ERVIC). The judge ruled that since the claimants could not prove that they themselves were harmed, they could not bring suit. He failed to understand that since RoN exists autonomously of human interest, article 71 of the Ecuadorian constitution allows any person to bring a suit on behalf of Nature, including those not personally affected by RoN violations. The judge also ruled that the claimants had not demonstrated an existing damage that needed to be repaired. This is, however, not necessary under the Organic Law of Jurisdictional Guarantees and Constitutional Control, which authorizes preventive action to protect RoN before harm is committed.

Finally, the judge ruled that evidence submitted by the claimants (e.g., affidavits and scientific studies showing the damage pine trees cause to *páramo* ecosystems) was invalid because it was not presented with the respective witness testimony, a process required in criminal lawsuits. Rather, the claimants' lawyers submitted the evidence with sworn affidavits, as permitted in constitutional lawsuits (which this one was) by the Organic Law of Jurisdictional Guarantees and Constitutional Control. According to the claimants' lawyer, ignorance of the different procedural requirements for different kinds of lawsuits is a common problem in small municipalities like Colta.[15] Such places often have a single "multicompetent judge" with general training to hear any kind of lawsuit. For practical reasons, such judges are often specialists in criminal suits and lack expertise in constitutional ones. This provides a significant obstacle in highly complex cases like constitutional RoN cases.

Acción Ecológica appealed the decision to the Provincial Court of Chimborazo. But the judge refused to consider new evidence, meaning Acción Ecológica could not submit the evidence of RoN violations that the first-instance judge had ruled inadmissible. Lacking the necessary evidence, the provincial judge ruled the claim inadmissible and denied the appeal. The

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claimants' lawyer, Pablo Piedra, lamented that "our constitutional rights were once again violated because of a procedural issue."[16] In September 2015 Piedra filed an appeal before the Constitutional Court, alleging a violation of due process. The Constitutional Court refused to hear the case and allowed the lower court ruling to stand.

THE VILCABAMBA RIVER CASE

Despite these failures, there are also successful cases of civil society lawsuits that similarly illustrate the importance of judicial knowledge and the politicization of cases. The first successful civil society RoN lawsuit was filed by two Americans, Nori Huddle and Richard Fredrick Wheeler, who own land along the Vilcabamba River in Loja Province. While widening a nearby road, Loja's provincial government discarded excavated material and construction debris into the river. Blockages altered the river's path and increased its flow, causing large floods that increased the risk of landslides, damaged local ecosystems, and reduced local landowners' access to land and water. Desperate to save their land, Huddle and Wheeler sued the provincial government on behalf of the Vilcabamba River. This constitutional lawsuit on behalf of Nature did not seek restitution to Huddle and Wheeler, but only the restoration of the river's natural ecosystem.

After losing in the first-instance court, Huddle and Wheeler appealed to the Provincial Court of Loja. In March 2011 the provincial court ruled in favor of the Vilcabamba River, making it the world's first successful RoN lawsuit. The judge's interpretation of RoN was likely helped by the fact that the case involved a relatively mundane issue like provincial road construction and not a more nationally politicized and controversial issue like mining.

At first the government of Loja resisted implementing the court's order to remedy the damage to the river. In March 2012 Huddle and Wheeler appealed to the Constitutional Court to enforce the order. In March 2018, the Constitutional Court issued a sentence confirming that Loja's government had finally complied with the Provincial Court order (Corte Constitucional del Ecuador 2018).

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PROFESSIONAL INTERPRETATION BY JUDGES

The Vilcabamba case shows that even in the first years of constitutional RoN there were judges who were aware of these new rights and began to think carefully about what it meant to apply them in practice. This is also demonstrated by the fact that a handful of judges began to unilaterally apply RoN in their sentencing even when lawsuits were not originally about RoN (i.e., when neither claimants nor defendants invoked it). They did so because of their professional desire and sense of obligation to correctly interpret constitutional law: the judges simply recognized that RoN is part of Ecuadorian law and that their professional standards required them to apply and interpret the law in its entirety. But just like early successful civil society lawsuits, this pathway occurred below the radar in low-level, less politicized cases involving agro-industry and infrastructure. Nevertheless, this pathway played an important role in establishing early precedent regarding RoN, laying the foundation for a more expansive RoN jurisprudence.

THE BIODIGESTER CASE

The first case illustrating this pathway began before the 2008 constitution codified RoN. In 1993, the agro-industrial company Procesadora Nacional de Alimentos CA (PRONACA) installed a large-scale pork processing plant in the canton Santo Domingo de los Colorados. Over fifteen years, PRONACA built forty factories in the canton that processed millions of pigs and chickens annually. Community members continually proclaimed the negative effects on the environment, human health, and the local economy; they accused PRONACA of human rights violations and appealed to the Ministries of Agriculture and Environment for help (Corte Constitucional del Ecuador 2009). After a decade of study, the Ministry of Environment determined that PRONACA was operating without proper legal permission. A 2003 Inter-Institutional Technical Commission report confirmed reduced quality of life for populations near the plant, including contaminated local rivers, severe odors, and decreased tourism. The National Council for Water Resources also found that PRONACA did not have legal permission to use subterranean water sources and ordered fines and proper permitting (Corte Constitucional del Ecuador 2009).

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Community members filed a lawsuit with the Nineteenth Civil Court in Pichincha Province, arguing that PRONACA's actions violated their constitutional rights to health and a safe and clean environment. They asked for a halt on six new biodigester machines that PRONACA was installing to process the release of methane gas caused by intensive pig farming. After losing in provincial court, the community appealed to the Constitutional Court of Ecuador, which issued its ruling in July 2009.

The Constitutional Court noted that "the principle of integrality or completeness dictates that in order to exercise true justice . . . it is necessary to look at all the elements of the case and the parties involved, one of them being Nature" (Corte Constitucional del Ecuador 2009). The court noted that the environmental impact of biodigestors depends on how well they are run, and that Nature's constitutional right to be restored to the ecological state it was in before PRONACA entered the province must be respected. Consequently, the court allowed the biodigesters to operate, but created a commission to audit and monitor the biodigesters to ensure proper water usage and waste management in order to protect the collective rights of communities and Nature (Corte Constitucional del Ecuador 2009). This ruling is significant not only for establishing RoN precedent but also because the court acknowledged its obligation to address RoN even when claimants do not invoke these rights. It also begins to establish connections between human environmental rights and RoN.

THE SANTA CRUZ ROAD CASE

Another case where judges unilaterally applied RoN in their sentences occurred in Santa Cruz, Galapagos. In 2012, eighteen citizens, primarily business owners, sued the municipal government to stop construction on Charles Darwin Avenue (a primary boulevard) during high tourist season, fearing it would hurt business. Their argument rested on the fact that the municipality lacked an environmental license for the project. The mayor argued that the municipality had the right to build the road quickly before the high tourist season, regardless of licensing procedure. While the claimants invoked procedural measures, Judge Benjamín Pineda Cordero applied RoN in his decision. He noted that the construction area constituted a species habitat, and the road crossed a migratory path for marine

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iguanas and other species. Invoking RoN (articles 71–73 of the constitution), Judge Pineda Cordero ordered that construction be suspended until the municipality obtained an environmental license based on an environmental impact assessment that would guarantee the protection of species habitat, particularly during migratory season.

This case is significant not only for the judge's unilateral application of RoN but also for placing Nature's constitutional rights over the rights of autonomous, decentralized municipalities. Citing the constitution's precautionary protection measures and the hierarchy of rights, the judge ruled that the court's duty to protect Nature took precedence over its duty to protect governments' ability to carry out public works (Pineda Cordero 2012). Equally significant, the judge cited the Vilcabamba case as precedent, suggesting that early cases brought by civil society contributed to his knowledge of RoN. It was another pathway, however—that is, instrumental action by government—that significantly raised the profile of RoN and put it on the radar of judges across the country.

INSTRUMENTAL GOVERNMENT AND CORPORATE ACTION

Somewhat ironically, early RoN jurisprudence in Ecuador was largely developed through government action. Thirteen of the thirty-eight RoN applications during 2008–2020 were initiated by the state (three of which were initiated by the Galapagos National Park), all successfully. Moreover, the state employed a variety of legal tools: constitutional lawsuits for protective action, criminal lawsuits, and administrative action. Sometimes these were motivated by instrumental policy considerations directed by President Correa, while other times agencies like the Ministry of Environment simply invoked RoN to justify routine administrative actions. Regardless, we argue that these actions strengthened RoN in Ecuador, perhaps unintentionally, by establishing precedent and raising the profile and awareness of RoN among judges. In this section we examine instrumental use of RoN by the government, as well as one oil company, to show how this greatly expanded and strengthened RoN jurisprudence. We also examine routine bureaucratic action in the following section.

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ILLEGAL MINING IN ESMERALDAS

The government's use of RoN to combat unauthorized mining illustrates instrumental state action. There has long been unauthorized, "artisanal" mining in provinces like Esmeraldas and Zamora-Chinchipe. When Ecuador's government decided to expand industrial mining, it initiated efforts to eliminate unauthorized mining. The desire to regulate all mining was undoubtedly one motivation. But the crackdown also responded to community appeals for state action to address the environmental damage caused by illegal mining. By 2010, various governmental and university reports showed that unauthorized mining had seriously degraded 140,000 ha of land and released high levels of toxins into water sources in the cantons Eloy Alfaro and San Lorenzo in Esmeraldas Province. Citing these reports, in May 2011 the Ministry of the Interior requested that the Twenty-Second Criminal Court of Pichincha approve preventive action. Citing articles 71–73 of the constitution, the request argued that the state's duty to protect RoN—in this case, the rights of water—justified extraordinary measures, including "the destruction of all items, devices, tools, and other utensils that constitute a serious danger to Nature" (Serrano Salgado 2011).

On May 20, 2011, the court approved the request and ordered the armed forces, the National Police of Ecuador, and other government agencies to collaborate in operations to control illegal mining to uphold RoN. That same day, President Correa issued Executive Decree 783, declaring a state of exception in San Lorenzo and Eloy Alfaro and ordering a military operation to combat mining in the cantons. The next day, nearly six hundred soldiers seized and destroyed more than two hundred pieces of heavy mining equipment, including those that local miners had rented from third parties (*El Universo* 2011). Over the next several years, similar operations were repeated in Esmeraldas and replicated in other provinces, including Morona Santiago, Napo, and Zamora-Chinchipe.

While the government's use of RoN to combat unauthorized mining may seem hypocritical given its refusal to acknowledge RoN in the Condor-Mirador case, instrumental state use of RoN has had longer-term consequences that strengthen RoN jurisprudence. For example, the state's action in Esmeraldas set the precedent that private property may be destroyed to protect RoN. This is now institutionalized in the

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country's 2014 Penal Code: title IV, chapter 4 identifies a series of crimes against Nature, and article 551 legalizes the destruction of private property to protect RoN against such crimes. While the original intention was to consolidate state control over mining, the law theoretically can now be used in other circumstances and introduces the idea that RoN takes precedence over property rights.

THE OIL PIPELINE CASE

Instrumental action can also be employed by the private sector. In 2013 the Crude Petroleum Pipeline Corporation of Ecuador (Oleoducto de Crudos Pesados, or OCP) had an oil spill in Esmeraldas Province, which impacted Carlos Alberto Hanze Moreno's property, cattle, and livelihood. The OCP immediately began a remediation and mitigation program approved by the Ministry of Environment to clean up the oil spill, which required the company to enter Hanze's property. Hanze blocked OCP access to his property in order to preserve evidence of the oil spill for a lawsuit seeking damages from the OCP. Citing RoN, the OCP filed for precautionary measures to be taken to enter Hanze's property to engage in cleanup and remediation. Those were granted, but Hanze appealed to the Criminal Tribunal of Esmeraldas, claiming he sought damages and did not want the company to enter until it settled on the indemnification.

In the lawsuit the OCP argued that RoN (in this case, water's right to not be polluted by the oil spill) involves the right to restoration, which is separate and distinct from an individual's right to indemnification. The OCP emphasized that "human beings do not own water, the water is the state's, it [water] has its own right" (Tribunal Segundo de Garantias Penales de Esmeraldas 2015, 4). In July 2013 the court ruled in favor of the OCP, acknowledging that Nature's right to restoration took precedence over an individual's right to indemnification.

This case is an excellent example of two aspects of RoN in Ecuador: (1) the use of a private corporation's instrumental action to protect RoN against an individual seeking damages from the company, and (2) the issues that emerge between collective RoN: that of protecting the water source in Esmeraldas for the population, and that of a private property owner. In this case, the court protected Nature's right to be restored through

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the Penal Code as a primary, constitutional responsibility and ruled that indemnification was secondary to RoN.

BUREAUCRATIC INSTITUTIONALIZATION

In contrast to President Correa's and the OCP's instrumental use of RoN, the Ministry of Environment and Galapagos National Park invoke RoN to justify routine administrative actions that are part of their institutional mission of environmental protection. In some cases, the Ministry of Environment unilaterally applies sanctions, like fines or the removal of environmental licenses for economic development projects determined to violate RoN. Other times, the Ministry and Galapagos National Park file criminal lawsuits against individual perpetrators. For example, in 2014 the ministry won two lawsuits against individuals who killed a condor and a jaguar, both endangered species. In justifying its actions the ministry cited article 73 of the constitution, which requires the state "to apply preventive and restrictive measures on activities that might lead to the extinction of species" (Republic of Ecuador 2008). In both criminal cases, the hunters were sentenced to prison. Below we examine two additional cases to show how RoN norms are being strengthened through bureaucratic routine.

SHARK FINNING IN THE GALAPAGOS

In the Galapagos Islands, where a special law and a marine protected area create unique criminal and civil codes for protecting this World Heritage Site, the Galapagos National Park has invoked RoN three times with the support of civil society. In July 2011, the Ecuadorian Coast Guard boarded the fishing vessel *Fer Mary* and six associated smaller crafts within the Galapagos Marine Reserve. They found 357 sharks without fins, representing 94 percent of the total catch in the storage area, and 1,335 shark hooks strung in a 30-mi line with specific characteristics used for capturing sharks. Sharks are a protected species, and fishing them inside the Galapagos Marine Reserve is an environmental crime under the Galapagos Law and the Penal Code of Ecuador (Sea Shepherd, n.d.). The problem is that it is very hard to prosecute under this law, as fishermen often

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claim they caught the sharks outside of Galapagos waters and accidentally drifted into Galapagos territory. RoN laws overcome this obstacle by making shark fishing illegal regardless of where the sharks are caught.

In September 2011, pressured by members in the conservation sector, the Galapagos District Attorney's Office and Galapagos National Park filed a criminal lawsuit against the *Fer Mary* captain and crew for crimes against Nature. The Galapagos judge claimed he was not competent to hear the case and moved it to Guayaquil, on Ecuador's mainland. In interviews, members of the park and government community commented that the judge felt threatened and that it was difficult for him to choose a "fish over a human's ability to feed his family and continue a career he has been doing over a lifetime."[17] Aside from delaying the case, the decision meant that the suspects were released from detention and the next hearing took place 982 km away from the crime scene. The *Fer Mary*, however, remained impounded in the Galapagos.

The case was transferred to Guayaquil and awaited trial. Proceedings began in May 2015 and in July 2015 the court ruled in favor of the sharks. Judge Fernando Franco Fernando sentenced the captain of the *Fer Mary* to two years in prison and the crewmembers to one year each. The verdict also ordered confiscation of the six accompanying motor launches, as well as the destruction of the *Fer Mary*. In his verdict the judge cited the constitution's articles 71–73 related to RoN (Noveno Tribunal de Garantias Penales del Guayas 2015). This marked the first conviction of an environmental crime in fourteen years of Galapagos law and set a precedent for sanctioning shark finning and other crimes against Nature in the Galapagos.

THE CAYAPAS SHRIMPER CASE

The Cayapas shrimper case shows how the Ministry of Environment's incorporation of RoN into its bureaucratic routine is slowly strengthening RoN jurisprudence such that it challenges vested economic interests. Ecuador is Latin America's largest shrimp producer, and shrimpers are a powerful interest group. The expansion of shrimp farms in Esmeraldas Province has destroyed much of its traditional mangrove forests. In 1995 the government established the Cayapas Ecological Reserve to protect some remaining mangroves. Even so, forty-two shrimp companies

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already operating in the area were allowed to stay within the reserve. This exacerbated conflict between the shrimp companies and local communities who relied on the mangrove forests for their sustenance. The government did little until 2008.

In 2008, President Correa issued Executive Decree 1391, which regulated shrimp farmers and made possible their removal from protected areas. Charged with enforcing protected areas, the Ministry of Environment removed dozens of shrimp companies from three ecological reserves, including Cayapas, between 2010 and 2012. In 2011, one shrimp farmer, Manuel de los Santos Meza Macías, sued for a protective action to stop the ministry's administrative action to remove him. At the hearing, Meza argued that "the economic interest of an individual takes precedence over Nature," and the judge agreed (Corte Constitucional del Ecuador 2015). Citing protections of private property (in art. 66, no. 26, and art. 32 of the constitution), the judge ruled that the Ministry of Environment's effort to remove Meza's shrimp company constituted an infringement on constitutional rights to property and to work.

After losing its appeal in the Provincial Court, the Ministry of Environment appealed to the Constitutional Court, arguing that the lower court's rulings were unconstitutional since they violated the constitution's RoN clauses. In its appeal the ministry argued that it "violated the constitution" for "the judge to place the economic interest of an individual above that of Nature . . . since the environmental legislation that governs us is oriented around preventing violations of the rights of Nature." The ministry asked the Constitutional Court to rule on this "to establish a precedent that permits us to exercise fully the respect for Nature and for *buen vivir*, as issues like these concern the whole community and are . . . nationally relevant" (Corte Constitucional del Ecuador 2015).

On May 20, 2015, the Constitutional Court ruled that RoN and *buen vivir* are central to the constitution and, therefore, RoN is transversal (e.g., art. 83, no. 6 and art. 395, no. 2). This means that RoN affects all other rights, including property rights. The court acknowledged that this reflects "a biocentric vision that prioritizes Nature in contrast to the classic anthropocentric conception in which the human being is the center and measure of all things, and where Nature was considered a mere provider of

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resources" (Corte Constitucional del Ecuador 2015). It ruled that by not guaranteeing RoN, the lower court rulings violated the constitutional right of due process, and it overturned the lower court sentences and ordered the case to be retried in the Provincial Court, but this time taking RoN into consideration.

Given the government's frustration with RoN being used to challenge its extractivist agenda, it is ironic that the state has been an influential force for strengthening RoN in Ecuador, succeeding in each of its twelve efforts to apply RoN. While the government often invoked RoN for instrumental purposes, the result was to build precedent and raise the profile and awareness of RoN among judges. And it did so in a relatively short period of time. Seven of the nine RoN lawsuits (and one administrative action) levied by the state occurred in 2014–2016. In hindsight, one can see this as a turning point in the politics of RoN in Ecuador.

NORM-DRIVEN CIVIL SOCIETY PRESSURE, PART 2: 2016–2020

Before 2016, civil society pressure was the least successful pathway for applying RoN. As noted above, only three of eight attempts succeeded. Those that succeeded did so by working below the radar on low-profile, depoliticized cases mostly involving local agricultural practices and infrastructure projects. This trend continued during 2016–2018, with civil society winning two RoN cases involving an infrastructure project in the city of Alamor and a pig farm in the canton of Mera.

Up to this point, environmental and Indigenous movements that had initially hoped the constitutional RoN provisions would be a tool for challenging the state's extractivist development agenda had stopped invoking RoN in lawsuits because they did not see it as a useful strategy.[18] This changed in 2019; in that year alone, civil society groups submitted nine lawsuits invoking RoN. Many were high-profile cases filed by Indigenous and environmental activists seeking to protect their communities and water sources from mining. In total, this second phase of civil society pressure involved twelve lawsuits, with all but two of them succeeding. What explains this renewed surge by civil society and their new success?

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A WINDOW OF OPPORTUNITY OPENS

We argue that part of the explanation involves the greater awareness among judges and growing precedent produced as a result of state action and environmental lawyers working below the radar. But equally important, Ecuador's political context shifted dramatically in 2017 when Lenín Moreno Garcés was elected president, replacing Rafael Correa. Moreno had been Correa's vice president and the Alianza Pais presidential candidate. But soon after taking office, Moreno split with Correa and used corruption charges to purge key Correa supporters from state institutions (De la Torre 2018; Wolff 2018). These efforts caused a split within Alianza Pais, causing the party to lose its legislative majority and forcing the government to rely on changing majorities (De la Torre 2018). While Moreno has continued to pursue an economic development strategy centered on mining and oil extraction, his election has influenced the evolution of RoN in Ecuador in one important way: by producing a judicial system widely perceived as more independent.

In February 2018 Moreno held a national referendum that proposed seven constitutional amendments. Most were clearly designed to reduce Correa's influence (Ramírez 2018). Voters overwhelmingly voted to name a new, temporary Council of Citizens' Participation and Social Control (CCPSC) empowered to evaluate all officials running Ecuador's accountability institutions. As Carlos De la Torre (2018, 83) notes, "the 2008 Constitution had created the CCPSC in order to ensure transparency and give citizens another voice in governance. In practice, [it] was stacked with Correa appointees" who named oversight officials loyal to Correa. The referendum allowed Moreno to name a transitional CCPSC from lists of nominees submitted by civil society.

In August 2018, the transitional CCPSC dismissed all nine judges of the Constitutional Court, citing a lack of independence and conflicts of interest that benefited the executive power (*Telesur* 2018). The CCPSC then established a new system for selecting judges that was designed to be more transparent and based on merit rather than political influence (*El Comercio* 2018). The new Constitutional Court, which was established in January 2019, is widely seen as professional and independent from the executive branch. According to Yaku Pérez Guartambel, an Indigenous leader and presidential candidate, and self-described "water defender,"

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the court's newfound independence has allowed legal victories for RoN and Indigenous activists that would have been impossible under Correa (Bermúdez Liévano 2019). In the following sections we discuss several cases that illustrate civil society's changed strategies and how this impacts the evolution of RoN jurisprudence in the courts.

THE RIO BLANCO CASE

After the loss over the Condor-Mirador mine in 2013, Indigenous communities continued to struggle against mining, but did so by invoking collective rights under articles 56 and 57 (rights of communities, peoples, and nationalities) in the 2008 constitution. In 2018, however, they began to combine arguments about collective rights with RoN. In one such case, Indigenous communities in Molleturo, Azuay Province, sued a Chinese mining company to protect the Rio Blanco. The Rio Blanco mine, located at 3,800 m above sea level, was part of former President Correa's development plan for the country in the early 2000s; 5,700 ha were leased to international corporations within and around the Cajas National Park in the Azuay Province. This is a large water catchment area, rich with lakes, primary forest, high levels of biodiversity, and high-altitude Andean *páramo* known for its significant role in the region's hydrology. Molleturo is also a protected forest area in which Ecuagoldmining South America S.A. planned to remove eight hundred tons of rock per day over seven years to create an underground gold and silver mine estimated to produce US$90 million in profits for the company (Sala de lo Civil y Mercantíl de la Corte Provincial del Azuay 2018).

The basis of the case was the failure to provide prior consultation of communities (per art. 57.7 of the constitution) tied to International Labor Organization's Convention 169 regarding the rights of Indigenous and tribal communities. But the Indigenous community members who brought this case also alleged violations of RoN under article 71 of the constitution. In their arguments, they emphasized the connection between RoN and Indigenous rights. Members of Molleturo cited polluted water and dry land that could no longer sustain traditional, Indigenous agricultural lifestyles. They also cited the violence of extraction that was brought to their community, including intimidation by the mining company and

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the police against the Indigenous community of San Felipe de Molleturo. Yaku Pérez Guartambel described how children could not run and play near the mining company and that some had changed schools to a different town out of fear (Sala de lo Civil y Mercantíl de la Corte Provincial del Azuay 2018).

In 2018, the communities of Molleturo won in both the first-instance court and the appeals court. "It seemed impossible to stop a mine with so many millions at stake," said Yaku Pérez Guartambel in an interview with Manuela Picq (2018b).[19] Before the trial, Pérez Guartambel led a peaceful protest against the mine with other water protectors. They were sequestered and violently attacked for over eight hours before they were released.[20] Given the violence surrounding the case, a court win was not only a welcome salve to the community but a sign to other water protectors around the world that collective rights and movements can succeed.

Ordering protective actions and a cease of all mining activities in the Rio Blanco community, judges cited their defense of Nature and its imminent threat from mining in this case (Sala de lo Civil y Mercantíl de la Corte Provincial del Azuay 2018). Additionally, the judges cited President Moreno's Decree 229 of 2017, which called for a "new nonextractivist economic model as part of the Indigenous cosmovision of *sumak kawsay* / *buen vivir* that implies harmony between people and nature" (Moreno Garcés 2017). In this light the judges noted the need to expand the protection of Nature to ban extractive mining in protected areas, intangible zones of Indigenous peoples living in isolation, and population centers. They ruled that the people of Molleturo demonstrated that Nature's integral system and its maintenance and regeneration had been directly affected (Sala de lo Civil y Mercantíl de la Corte Provincial del Azuay 2018).

THE COFÁN SINANGOE CASE

The Cofán Indigenous group of Ecuador, like their neighbors in Azuay, are fighting extractive mining industries. This group of Cofán are located in the Sinangoe area of the Amazonian province of Sucumbios, along the tributary banks of the Aguarico River, close to the Cayambe Coca National Park. The area in question covers 125 sq mi and is home to the Cofán and Chingual Rivers, as well as endangered species like the

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spectacle bear and the mountain tapir. It ranks among the most biodiverse regions in the world.

In 2018, with the assistance of global partners Amazon Frontlines and the Indigenous Ceibo Alliance, the Cofán collected an archive of evidence of the detrimental impacts of gold mining on their community and the living things within in it (Hill 2018). There were over twenty mining concessions operating along their riverbank community with authorization from the Ministry of Mines and thirty-two more permits pending (Paz Cardona 2019). Scientists note the use of cyanide in the mining process along the river but cannot yet confirm the exact quantities.

Like their counterparts in Azuay, the Cofán sued to stop the mining operations and integrated RoN into arguments about Indigenous rights of prior consultation. The Cofán won in both the first-instance court and on appeal. Ecuador's Provincial Court of Sucumbios found that prior informed consultation and RoN were both violated. The court canceled all fifty-two mining concessions that had been granted or were being processed for the 125 sq mi of Cofán territory, and it prohibited the granting of new mining concessions. Moreover, the court ordered the government to repair the environmental damage caused by the mining operations (Corte Provincial de Sucumbios 2018).

The Provincial Court ruling began to form a legal basis for connecting Indigenous rights and RoN. Citing the International Labor Organization's Convention 169, the court ruled that prior consultation must be done in a culturally appropriate way, meeting standards of interculturality. This means it must be done in a way that is consistent with the cosmovision of local Indigenous communities. The judges noted that the Cofán cosmovision does not have a word for Nature (in the abstract), but rather for forest, and that word implies an integration of the water and all living things inside of it. They explicitly recognized the cosmovision of Indigenous peoples and their lands, or Pachamama, as a "living organism and the human as one of her creatures . . . thus intimately tied to the phenomena of nature" (Corte Provincial de Sucumbios 2018).

In short, the ruling provides a legal basis for treating RoN and Indigenous rights as interwoven to create a set of "biocultural rights" (Bavikatte, Sanjay, and Bennett 2015; Chen and Gilmore 2015). The court recognized the integral "rights of territory and culture" that establish "the state's

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obligation to protect the special relationship of Indigenous peoples with their territories and the territories themselves, not just as a source of survival, but also an essential part of the way of life, culture, and spirituality, the essence of the community" (Corte Provincial de Sucumbios 2018). The judges explicitly recognized RoN in the constitution various times as a primary reason for the ruling, stating, "Article 71 is very clear that Nature reproduces life and this integral existence has the right to be respected and maintained and its vital cycles regenerated . . . which is a basic criteria and fundamental for the judges that this undoubtable principle—pro nature . . . be applied" (Corte Provincial de Sucumbios 2018).

The court justified its ruling by citing a number of domestic and international cases as precedent, showing how RoN jurisprudence in Ecuador is evolving in response to advancements in both Ecuadorian courts and those abroad (Corte Provincial de Sucumbios 2018). The judges cited a 2015 ruling in Ecuador regarding an oil spill by Chevron as a precedent for the pro-Nature principle. Aligning the constitution's RoN articles 71–74 on the global level, they also cite the Inter-American Commission on Human Rights' 2017 ruling on the inextricable tie of human rights and Nature. Notably, the court cited the Colombian Constitutional Court's 2016 decision recognizing the Atrato River as a legal person with rights, which was similarly rooted in an argument about biocultural rights (detailed in chapter 8). Like its counterpart in Colombia's Rio Atrato case, Ecuador's Provincial Court of Sucumbios ordered the provincial and municipal governments to work together to confirm the closing of the mining concessions in order to guarantee the sacred places of the Cofán (Corte Provincial de Sucumbios 2018, 29).

The idea of biocultural rights was further strengthened in Ecuador by a similar 2019 ruling by Ecuador's Provincial Court of Pastaza, which combined Indigenous rights and RoN arguments to prohibit oil extraction in over 800,000 ha of Waorani territory in the Amazonian Basin (Corte Provincial de Pastaza 2019a).

THE PIATUA RIVER CASE

While the aforementioned cases show how RoN jurisprudence is evolving to frame RoN as inextricably intertwined with human environmental

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and cultural rights, another set of cases show how Ecuadorian courts are beginning to differentiate between environmental permits and RoN. This has important implications for thinking about the relationship between RoN and sustainable development. Conventional wisdom among lawyers and judges has been that to meet international standards of sustainable development one simply needs to follow traditional environmental law and procedures, like conducting environmental impact assessments, making sure environmental licenses and permits are issued, and so forth. Before 2019, Ecuadorian courts typically said that when these procedures of traditional environmental law are followed, RoN is not violated. This was, for example, the logic of the ruling in the Condor-Mirador case. Yet in 2019 two courts departed from this thinking by ruling that RoN can be violated even if environmental impact assessments were conducted and environmental licenses were granted. The implication is that RoN implies a standard of sustainable development beyond the conventional international definition of meeting environmental procedural requirements.

One such case involved the Piatua River, which was given a concession by the Ministry of Energy and Non-Renewable Natural Resources to an electric company, the Compañía de Generacion Electrica San Francisco, for forty years in 2017. The Ministry of Environment approved environmental permitting in 2018. The Kichwa communities of Santa Clara, in Pastaza Province, along with the Confederation of Indigenous Nationalities of the Ecuadorian Amazon (Confederación de las Nacionalidades Indígenas de la Amazonia Ecuatoriana, or CONAIE) and the Ecuadorian Ombudsman's Office (the Defensoría del Pueblo), brought suit against these government entities and the electric company for denying the river's rights, as well as the communities' rights as a collective territory and their right of free and prior consultation.

In September 2019 the Provincial Court of Pastaza ruled that both RoN and community rights had been violated despite the provision of an environmental impact assessment and permitting that followed the law. Because of the concession, the Piatua River's flow had been disrupted significantly to less than 10 percent of its original flow, threatening the river's ability to maintain its vital cycles and endangering flora and fauna of the area. This environmental degradation impacted the community's way of life, customs, spiritual traditions, economic viability, and ecotourism.

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The court reviewed the mitigation impacts in the environmental impact assessment, yet argued that the Ministry of Environment could not violate article 71 of the constitution, which "provides the right to respect the integral existence, maintenance, and regeneration of vital cycles, functions and evolutionary processes" of natural ecosystems (Corte Provincial de Pastaza 2019b). The court noted that natural resources can only be used when RoN is protected: "always and when vital cycles are respected and nothing impacts their existence" (Corte Provincial de Pastaza 2019b).

This ruling, and a similar one regarding road construction in Gualaceo canton (Corte Municipal de Gualaceo 2019), suggest an evolution of RoN normative development in the Ecuadorian courts. In both cases the courts found that conventional environmental law and regulatory processes were not sufficient justification for approving development projects that violate RoN. These rulings expand the use of RoN as a standard for sustainable development beyond the conventional international definition of meeting environmental legal and procedural requirements.

In July 2020 the Constitutional Court of Ecuador selected the Piatua case to create binding jurisprudence regarding the relationship between environmental permits and RoN, and in general the role of environmental permits in protecting Nature (the ruling was pending at the time of writing). As we will see in chapter 7, the Piatua River case has implications for lawsuits in Pennsylvania and elsewhere that argue that environmental procedure is insufficient for sustainable development. This case begins to lay the legal groundwork for arguments that sustainable development must adopt a holistic and regenerative approach, recognizing the vital cycles and integration of community and Nature.

THE CITIZEN REFERENDUM AGAINST MINING IN AZUAY

As noted in the aforementioned Rio Blanco case, Indigenous and other civil society activists in Azuay Province have been highly active in working to prevent mining in order to protect regional water sources. In 2019, Indigenous leader and water protector Yaku Pérez Guartambel was elected prefect of Azuay Province. In March 2019, he held a referendum vote on whether to allow mining in the town of Girón, where the important

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Quimsacocha watershed is located. Nearly 87 percent of citizens voted to ban mining. The national government rejected the referendum, saying that only it had the competency to decide issues of natural resource extraction.

Pérez Guartambel submitted a request to the Constitutional Court of Ecuador to consider the issue of whether subnational governments can hold a referendum to decide whether or not to allow mining in their territory. Constitutionally, this is a case about citizen participation rather than RoN. It is a question of competing constitutional rights: the right of citizen participation versus the right of the state to control authority over mining. Yet RoN formed part of the reasoning of the Constitutional Court's ruling.

The court rejected the referendum petition on procedural grounds because the questions were not written in the proper form, essentially lacking clarity (one of the criteria for constitutional compliance). The court emphasized, however, that the main substantive issue of the request—whether a national issue like mining could be subject to popular consultation (giving local governments and communities the right to a referendum in regard to mining)—could be considered by the court. This is because there is a legitimate question of constitutional rights regarding citizen participation, which the court stated are linked to environmental rights, human rights, and RoN. Specifically, the court cited the right of *buen vivir* and article 395, which "guarantees active participation of communities and nationalities affected by any activity that generates environmental impacts" (Corte Constitucional del Ecuador 2019a). In short, the Constitutional Court said that it would consider the issue, but that Pérez Guartambel would need to resubmit a petition that was worded properly to meet constitutional standards.

This judicial ruling and its reasoning are important for two reasons. First, they raise the possibility that national issues with authority vested in central government could be subject to citizen participation and popular consultation (referendum) at the local level. This is essentially the same question faced by community rights activists in the United States who are fighting to protect local water sources from extractive industries, as we will see in chapter 7. Ecuador's Constitutional Court ruled in favor of the referendum, challenging conventional wisdom among constitutional lawyers

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that such local referenda are not constitutionally possible.[21] It is another indicator of normative change underway.

Equally surprising is that the Constitutional Court based its reasoning regarding citizen participation in part on the logic of RoN. It took this occasion to state that the exploitation of nonrenewable resources must be done in a way consistent with RoN, creating another legal avenue for strengthening RoN jurisprudence. The court's explanation and reasoning is an illustration of the normative change happening in the Ecuadorian courts and the reframing of sustainable development based on RoN and *buen vivir*. Similar to the Pennsylvania cases discussed in chapters 3 and 7, Azuay prefect Yaku Pérez Guartambel argued that the province has the right to protect Nature. Around the world, local communities and governments are beginning to challenge traditional notions of sovereignty as a result of their struggle to protect ecosystems impacted by multinational corporations supported by national governments. The cases of Azuay and others in this book illustrate the tensions of RoN at multiple scales and the continued fight to protect local peoples and their environments.

THE DULCEPAMBA RIVER CASE

By mid-2019 RoN had evolved in the court system to the extent that the Constitutional Court decided it needed to create binding jurisprudence on RoN, formally establishing the relationship between RoN and various human rights, particularly in development policy. As a vehicle for establishing this binding jurisprudence, the court selected a case involving the diversion of the Dulcepamba River to create the Hidrotambo Electric Dam.

The lawsuit was brought by the San Pablo de Amali community in Bolivar Province against the Electric Control and Regulation Agency, the Secretariat of Water, the Ministry of Environment, and the government of Bolívar. The Dulcepamba River used to be 160 m away from the community, but after the diversion it is now only 20 m away. Consequently, there was flooding of the community in 2015. The overflowing of the riverbanks impacted the community by causing loss of human life, destroying infrastructure, and moving the legally recognized flood zone to include the community (which was not previously in the flood zone).

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From 2015 to 2019, the community repeatedly asked all relevant authorities to take action to prevent future floods. The authorities did inspections and concluded that Hidrotambo, the private company that received the water concession, needed to take various actions, including constructing containing walls to protect the community. Over the four years the company built one containing wall, and the quality of the construction was very poor. Frustrated and tired of the lack of action, the community went to the constitutional court system. The first- and second-instant courts declined to hear the case, saying it was not a constitutional issue but a legal one and should go through the normal court system. The issue was never analyzed or resolved.

Consequently, the community went to the Constitutional Court and requested an extraordinary action of protection. In response, the court said it was going to analyze the case and also select this case to establish binding jurisprudence over the relation between the impacts, effects, and standards that have to be applied regarding the exploitation of nonrenewable resources, RoN, and collective rights. The court noted the national relevance of this case for similar projects that "provide basic services to the citizens and income to the State, notwithstanding the conflicts they present for collective rights and RoN as a result of the omission of effective public policies to prevent risks and guarantee the protection of rights" (Corte Constitutional del Ecuador 2019b). The court had not yet ruled at the time of this writing. Yet the consideration of tensions resulting from development projects among collective rights, RoN, and state economic development will have important implications for future development projects in the country and will provide insights for other states considering RoN legislation.

CHAPTER SUMMARY

This chapter shows the advancement in Ecuadorian judges' applications of RoN since the 2008 constitution was adopted. The 2018–2019 rulings in favor of Indigenous communities and the rights of their ecosystems highlight the impact civil society organizations have had in propelling the evolution and advancement of RoN jurisprudence in Ecuador. This is

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particularly true for Indigenous communities that claim an integral link with their territories as a part of a singular living organism in which all beings live. This link is cited by the courts as biocultural rights, an idea previously cited in the Atrato River case in Colombia, illustrating norm diffusion and learning within court systems (Corte Provincial de Sucumbios 2018).

But civil society success has come only recently, after RoN precedent was already established and the Constitutional Court was restructured to appear more independent. Before 2018 most civil society efforts failed, including all high-profile lawsuits challenging state-led development projects. Early on, some analysts dismissed Ecuador's RoN laws as merely "cheap talk" on the part of the government, which presumably had no intention of enforcing RoN when it conflicted with its interests (Snyder and Vinjamuri 2004). Yet a comparison of the full range of RoN cases suggests that Ecuador's constitutional RoN articles do matter in the sense that RoN activists are using them as tools to strengthen RoN jurisprudence and norms in a way that are having real impacts, including the nullification of mining concessions. To do so, however, RoN advocates had to overcome three obstacles: (1) the politicization that inevitably occurs around norm contests; (2) the lack of secondary laws that parse out more detailed elements of RoN's application; and (3) initial lack of knowledge among judges regarding how to interpret RoN.

RoN was politicized from the outset because Indigenous and environmental activists used it to challenge the government's economic development strategy. One important consequence was that the secondary laws and institutions that were to strengthen and give form to the constitution's RoN principles were not created. The government ignored this process as it focused on expanding mining. After their legal challenges to mining failed, RoN activists decided not to pursue secondary laws out of fear of weakening the constitutional provisions. This meant that judges had a great deal of power to interpret and apply the constitution's RoN principles, and this is why the judges' knowledge became so important. The politicization of RoN set the conditions for RoN norm development through the courts.

Ironically, the early politicization of RoN arguably contributed to RoN jurisprudence by raising its profile. While civil society did not win highly

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politicized, high-profile lawsuits, antimining activists used Ecuador's constitutional RoN articles as a tool for mobilizing society and placing RoN on the national agenda, making it a salient issue. The mobilization in response to oil drilling in Yasuní National Park is illustrative.

In 2013, Ecuador's government abandoned its proposal to forgo oil extraction in Yasuní in exchange for international donations to finance alternative development. It then announced plans to initiate new oil drilling in the reserve.[22] In response, RoN activists launched a national social movement named YASunidos. Their media campaign highlighted that drilling in Yasuní would violate the constitutional RoN of Indigenous communities. YASunidos organized a campaign to collect signatures to hold a referendum on whether to block drilling in Yasuní. When the National Electoral Council rejected the signatures, activists sued before the Constitutional Court. The court did not deny electoral fraud, but it also did not mandate a referendum. This outcome increased popular perception that the government's actions were unconstitutional and increased YASunidos' ability to mobilize society against the government.

The result was that RoN became more salient in national discourse. When politicians and bureaucrats discussed development, particularly in mining and oil, they often also discussed RoN. While the national government still pursued development through extractivism, it was forced to justify such activities as consistent with the concept of *buen vivir* and constitutional RoN. This arguably explains why Correa's government repeatedly invoked RoN instrumentally in 2015 to justify and legitimize its policy agenda, including in controversial cases that countered powerful economic actors (e.g., unauthorized miners and shrimp farmers). Ironically, because it always won in those politicized cases, the state played a crucial role in strengthening RoN jurisprudence by accumulating precedent and increasing the knowledge of judges.

The increasing number of successful RoN sentences suggests that judges' knowledge of RoN is expanding, a point confirmed in interviews with lawyers and the judges themselves. Interview data and the legal reasoning presented in judicial sentences show that this is largely due to the combination of high-profile cases brought by the state and civil society's efforts to work below the radar to accumulate precedent through low-profile cases. To our surprise, knowledge among judges opened a pathway

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for applying RoN that we did not initially consider. As judges gain more understanding of RoN, they become agents in the development of RoN norms and jurisprudence, not because they are norm entrepreneurs but because of their professional requirements to interpret the law in its entirety, forcing them to grapple with the relationship between RoN and human cultural and economic rights. The fact that Ecuadorian judges apply RoN to cases that were not initially about RoN is evidence that RoN norms are strengthening in the judicial system. This is another way that Ecuador's allegedly "weak" (i.e., not fully implemented) RoN laws have mattered.

Ecuador's growing caseload and strengthening of RoN jurisprudence suggest pathways toward successful implementation in other states seeking to codify RoN. Ecuador's experience shows that even in states with extractivist policies and economies, RoN has the potential to (1) emerge as a right equal to human rights and (2) change the development dynamic to include a more biocentric approach. In Ecuador, despite its extractivist development agenda, placing RoN as a constitutional right has heightened its importance and called the legal community, judges, and civil society to reframe decisions in terms of living in harmony with Nature rather than strictly in anthropocentric terms. Ecuador's RoN legal decisions have been cited in courts around the world, illustrating how domestic norm construction processes have international implications.

Of course, it is not inevitable that "weak" RoN laws will strengthen over time. Chapter 5 analyzes why Bolivia, a state with similar RoN laws and seemingly similar potential, has not implemented RoN.

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5

WHAT HAPPENED TO BOLIVIA?

Bolivia was the second country in the world, after Ecuador, to adopt a national law recognizing rights of Nature (RoN). On paper, both countries' RoN laws are among the strongest in the world. Recognition of RoN came first in the 2008 Constitution of the Republic of Ecuador. In Bolivia it came in 2010, with the Law of the Rights of Mother Earth, which was upgraded in 2012 to the Framework Law of Mother Earth and Integral Development for Living Well. The 2012 law's framework status makes it superior to other laws.

In addition to their elevated legal status, Ecuador's and Bolivia's RoN laws are structured very similarly, following the Nature's rights model described in chapter 1. Both recognize rights for all of Nature, defined as Pachamama, or Mother Earth. Bolivia's Law of the Rights of Mother Earth defines Mother Earth as "a dynamic living system comprising an indivisible community of all living systems and living organisms, interrelated, interdependent and complementary, which share a common destiny" (Estado Plurinacional de Bolivia 2010, art. 3).

Bolivia's law also recognizes rights that are virtually identical to those in Ecuador's constitution. Article 7 of the law recognizes Nature's right "to maintain the integrity of living systems and natural processes that sustain them, and capacities and conditions for regeneration" and recognizes Mother Earth's right to "the diversity of life," to water and clean air,

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to restoration when affected by human activities, and to maintain "the functionality of the components of Mother Earth in a balanced way for the continuation of [ecosystems'] cycles and reproduction of their vital processes" (Estado Plurinacional de Bolivia 2010).

The guardianship arrangements in both countries are also identical. Like Ecuador's constitution, Bolivia's law does not appoint specific guardians, but empowers any citizen or the state to report and address violations (Estado Plurinacional de Bolivia 2010, arts. 8–9).

These similarities are not coincidental. Both countries' laws resulted from pressure exerted by Indigenous movements, who allied with newly installed socialist governments to enact a post-neoliberal development model based on Indigenous understandings of humans' relationship to Nature (Kauffman and Martin 2018; Lalander 2014; Postero 2017; Radcliffe 2012); this political alliance gave Indigenous movements influence in the writing of each country's new constitution (and Bolivia's subsequent RoN laws). Indigenous movements in both countries advocated RoN as a tool for implementing an approach to development rooted in Indigenous values and concepts—particularly *suma qamaña* in Aymara and *sumak kawsay* in Kichwa. Typically translated into Spanish as *buen vivir* ("living well"), these concepts critique models of development based on exponential growth in consumption and instead emphasize the importance of maintaining balance by living in harmony with other members of one's community and with Nature (Hidalgo-Capitán et al. 2014).

Despite RoN sharing strong legal status, similar structuring, and emerging through similar sociopolitical processes pushed by the same types of actors sharing the same agenda, implementation has been dramatically different in the two countries. Chapter 4 showed how RoN jurisprudence has gradually but steadily developed and strengthened in Ecuador. By contrast, there is no evidence that Bolivia's RoN laws are being implemented. To date, RoN has not been invoked in a single lawsuit in Bolivia, much less upheld by a court at any level. Nor has RoN been inserted into administrative policy. Despite its name, Bolivia's Plurinational Authority for Mother Earth does not promote RoN domestically. Rather, it oversees the government's policy for addressing climate change, particularly regarding international negotiations. Indeed, RoN does not exist in the national dialogue in Bolivia the way it does in Ecuador, which is curious

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given the Bolivian government's defense of RoN in international policy arenas.

Why did strong national RoN laws not get implemented in Bolivia as they did in Ecuador? By answering this question, this chapter sheds light on the political processes shaping whether and how new norms become institutionalized and put into practice. We argue that this variation can be explained by: (1) differences in how the two countries' RoN laws situate RoN in relation to competing economic rights; (2) variation in Bolivia's and Ecuador's civil society structures, particularly regarding the cohesiveness of highland and lowland Indigenous groups, the strength of environmental movements, and the presence of legal communities trained in RoN jurisprudence; and (3) each government's strategy for responding to the tension between RoN and the government's development agenda.

THE BOLIVIA-ECUADOR COMPARISON

Bolivia and Ecuador provide a unique opportunity to study norm development processes using a "most similar systems" comparison. The two nations are extremely similar in terms of their political development, demographics, culture, economic development, and sociopolitical alliance structures. Very similar domestic political processes produced similar national laws institutionalizing RoN.

The Bolivia-Ecuador comparison is valuable because it highlights the limitations of a commonly cited explanation for Bolivia's lack of RoN implementation. It is tempting to credit this to the Bolivian government's development strategy, which is based on industrial extraction of natural resources to finance poverty reduction programs. Certainly, Bolivia's government has prioritized economic development through extraction over protecting RoN. As chapter 4 showed, however, the same situation exists in Ecuador, but RoN jurisprudence strengthened there nonetheless.

Both governments have expanded mining and other development activity into protected areas and Indigenous-controlled territory, prompting fierce social backlashes. Leading examples include the national uprising to protect the Isiboro Sécure National Park and Indigenous Territory (Territorio Indígena y Parque Nacional Isiboro Sécure, or TIPNIS) in Bolivia and the similar movement to protect Yasuní National Park in Ecuador.

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Like Bolivian president Evo Morales, Ecuadorian president Rafael Correa saw RoN as a threat to state-led development and took steps to undermine its implementation. Nevertheless, RoN jurisprudence developed in Ecuador. Consequently, the conflict between RoN and state-led development is not a sufficient explanation for the variation in outcomes between the two countries.

REFRAMING "THE BOLIVIA PUZZLE" IN LIGHT OF ECUADOR

Chapter 4 showed that Ecuadorian RoN activists faced conditions very similar to those in Bolivia: government opposition to RoN as a threat to its development agenda, a judicial system seen to lack political independence, and a lack of knowledge among judges about how to interpret new RoN laws. So, how did Ecuadorian RoN activists overcome these obstacles? Chapter 4 demonstrated the importance of three strategies: (1) working "below the radar" to gradually build jurisprudence through local courts using lower-profile lawsuits that do not challenge the national government, (2) training lawyers and judges; and (3) launching public campaigns to raise popular support for RoN, thereby pressuring the government to rhetorically support RoN, albeit instrumentally. These strategies forced judges to consider the relationship between RoN and other rights, and over time their thinking naturally evolved and strengthened RoN jurisprudence.

Ecuador's experience raises several questions regarding why Bolivia's RoN laws have not been implemented. First, the social movements that drafted Bolivia's Law of the Rights of Mother Earth mobilized national protests beginning in 2011 to block construction of a highway through TIPNIS, much like their counterparts in Ecuador created the YASunidos movement (Solon 2017). Yet they did not frame the struggle around RoN. Why did they—the creators of Bolivia's RoN laws—not invoke it, instead choosing to invoke Indigenous rights like the right to prior consent? Moreover, why have they not linked RoN and Indigenous rights the way Indigenous groups in Ecuador have done?

Second, Bolivian civil society has not filed any lawsuits at any levels invoking RoN,[1] nor have they trained lawyers and judges in how to interpret RoN law, as Ecuadorian activists have done. Why have Bolivian RoN

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advocates not sought to build RoN jurisprudence either through high-profile lawsuits or by working below the radar, as Ecuadorians did?

Third, why did Bolivia's government not invoke RoN instrumentally in cases where it might have served its interests? As we will show, Bolivian president Evo Morales regularly invokes RoN in international policy arenas, and clearly believes there is some advantage in doing so. Why does he apparently not see the same advantage domestically? Why has Morales not been subject to rhetorical entrapment domestically the way Ecuadorian president Correa was?

The remaining sections answer these questions by tracing the political struggle over RoN in Bolivia. They identify the conditions and strategies shaping Bolivia's outcome and compare them to Ecuador's experience in order to induce key factors explaining variation in outcomes.

THE POLITICAL CONTEXT OF BOLIVIA'S RIGHTS OF NATURE LAWS

To understand the factors obstructing implementation of Bolivia's RoN laws, it is useful to first summarize the forces giving rise to these laws and their content. The story begins with the mobilization of the Indigenous and campesino social movements in the 1990s and early 2000s against the country's neoliberal development agenda. These movements equated neoliberal economics with colonialism and sought to restructure Bolivia's state and society in a way that empowered Bolivia's historically marginalized Indigenous and campesino communities and reflected Indigenous knowledge, values, and practices—a process they called decolonization.[2]

The politics of decolonization, and consequently RoN, was shaped by historical divisions separating three broad socioeconomic and cultural groups. Whites and mestizos historically controlled the political and economic systems and constituted the country's elites. For reasons relating to patterns of historical development, Aymara and Quechua peoples in the highlands tended to self-identify as campesinos—emphasizing class rather than ethnicity—and organized in *sindicatos* (unions). Because of this class-based identity, and negative connotations associated with the word *indígena* (Indigenous), these groups chose to identify themselves instead as *originario* peoples (Postero 2017). Many of them now live in

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urban centers and are not closely tied to the land in the same way as most lowland groups, who self-identify as Indigenous and perceive their territory as an important component of their identity. The difference between highland *originarios* and lowland Indigenous groups is central to the battle over how to define indigeneity in Bolivia, and thus what it means to create a "decolonized" Indigenous state (Postero 2017). These differences are also key to explaining why the rights of Mother Earth are not invoked domestically.

The Cochabamba Water War (1999–2000) and the Gas War (2003) spurred national mobilization of highland and lowland social movements. In 2004 the country's five main campesino, *originario*, and Indigenous movements formally joined together to create the Unity Pact as a space for dialogue (Garcés 2010).[3] The Unity Pact facilitated collaboration among the movements' diverse organizations to demand the convening of a Constituent Assembly to write a new constitution that would restructure relations between the state and society. Evo Morales, an Aymara from the highlands and head of the coca growers union, rose to power as a result of this social mobilization. In 2006 Morales was sworn in as the country's first self-identifying Indigenous president. His party, Movement for Socialism (Movimiento al Socialismo, or MAS) gained a large majority in the legislature. While a Constituent Assembly was not part of MAS's original platform, Morales supported the Unity Pact's demand, and the assembly was inaugurated in August 2006 (Tapia 2010, 143).

The Unity Pact produced a draft constitution meant to orient the debates in the Constituent Assembly toward the goal of decolonization (Garcés 2010). But this proposal was substantially modified in the political struggles between MAS, the Unity Pact, and opposition parties representing white and mestizo elites. MAS angered many Indigenous organizations by restricting their ability to send delegates to the assembly and instead brought in Indigenous representatives as MAS delegates. The party then changed the rules of debate to allow a simple MAS majority to approve all decisions except the final text (Postero 2017, 49). The Constituent Assembly process broke down amid ethnic polarization and conflict. In the end, Morales and MAS cut a deal with right-wing parties to approve a constitution, adopted in 2009, that was quite different from the proposals made by the Unity Pact to restructure the state.

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Many members of Bolivia's largest social movements were frustrated by what they saw as a lack of progress in their decolonization project and the MAS government's excluding them from policy making. Rather than merely expressing their concern, these movements began proactively developing proposed laws that would move their decolonization agenda forward. One of the first was the draft Law of the Rights of Mother Earth released by the Unity Pact in November 2010 (Pacto de Unidad 2010).

MORALES'S INTERNATIONAL RIGHTS OF NATURE DISCOURSE

One of the most puzzling aspects of the Bolivian case is the fact that Evo Morales, and Bolivia's government generally, have become known internationally as champions of RoN. For Morales the discourse is tied to global debates over how to address climate change and achieve ecologically sustainable development. Frustrated by the lack of progress and perceived inequities characterizing international climate negotiations, Morales made an impassioned speech to the United Nations (UN) General Assembly on September 23, 2009, arguing that the climate crisis stems from "the permanent removal of natural resources and the commercialization of Mother Earth." He further argued that for countries to guarantee the well-being of their citizens, they must first "guarantee the well being of Mother Earth," because "human life cannot exist without Mother Earth. . . . If we do not defend the rights of Mother Earth, there is no use in defending human rights." He then called on all nations to "declare and expand the rights of Mother Earth's natural regeneration" (Morales 2009).

Frustrated by the lack of progress made at the 2009 UN Climate Change Conference in Copenhagen, in April 2010 Morales convened an international conference called the World People's Conference on Climate Change and the Rights of Mother Earth in Cochabamba (see chapter 2). Among other things, attendees of the conference adopted a Universal Declaration of the Rights of Mother Earth, which mirrored RoN recognized in Ecuador's constitution and provided a template for RoN listed in Bolivia's Law of the Rights of Mother Earth, drafted the following November.

Over the last decade, Bolivia's government has continued to advocate for the recognition of RoN within the UN system. Under Morales,

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the government played a leading role in establishing the UN Harmony with Nature Programme, which serves as an organizational platform for promoting RoN in international law and domestically around the world. As chapter 2 noted, this program sponsors annual dialogues within the UN General Assembly on how to implement RoN as a tool for achieving ecologically sustainable development. Bolivia remains a major political and financial sponsor of these dialogues, which have produced multiple reports from UN secretaries-general advocating RoN.[4]

Given the international reputation that Morales has cultivated as a RoN advocate, he should be an easy target for rhetorical entrapment by domestic RoN advocates. So why have Bolivian social movements, particularly the members of the Unity Pact who drafted the 2010 Law of the Rights of Mother Earth, not invoked RoN either in lawsuits or in national protests? And why has the MAS government not invoked RoN domestically, even in the pursuit of its own objectives, as President Rafael Correa did in Ecuador? The following sections answer these interrelated questions and highlight the importance of three factors that explain the variation in outcomes between Bolivia and Ecuador: (1) differences in how the two countries' RoN laws situate RoN in relation to competing economic rights; (2) variation in the cohesiveness of highland and lowland Indigenous groups, the strength of environmental movements, and the presence of legal communities trained in RoN jurisprudence; and (3) Morales's strategic reframing of the government's decolonization project.

BOLIVIA'S WEAKER RIGHTS OF NATURE LAWS

To determine why Bolivian civil society groups are not invoking RoN laws, we conducted more than two dozen interviews with leaders of various social movements included in the Unity Pact and collected primary documents from the movements and the Bolivian government. Interviewees included individuals who helped draft the 2010 Law of the Rights of Mother Earth and 2012 Framework Law of Mother Earth and Integral Development for Living Well, as well as leaders of movements mobilizing to protect TIPNIS and the nongovernmental organizations (NGOs) and lawyers who have supported these various social movements. Interviewees were remarkably consistent in the answers they gave as to why they

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do not invoke RoN laws in their struggle. In this section we discuss their answers, presented in the order in which interviewees prioritized them.

Representatives of the groups most interested in defending the rights of Mother Earth (e.g., Indigenous intellectuals, lowland Indigenous groups, and the lawyers and NGOs supporting them) stressed that they do not see the two rights of Mother Earth laws as viable legislation that will provide legal support for their agenda; they see the legal basis for RoN as too weak. Moreover, representatives of the Indigenous groups we interviewed said they do not identify with the laws or see them as representing their agenda. Consequently, there is no sense of ownership of the laws, and little belief that these laws can help them. To understand why, it is useful to briefly review the politics behind the passage of the 2010 and 2012 laws.

The idea of codifying RoN into law developed from, and was spurred by, lowland Indigenous groups.[5] The Unity Pact took up the task of drafting a RoN law following the call to do so in the resolutions adopted at the World People's Conference on Climate Change and Mother Earth. The Unity Pact's introduction to their draft law states, "The Unity Pact took seriously the resolutions of Tiquipaya [Cochabamba] and gave itself the task of preparing a Draft Law of Mother Earth. This work lasted approximately nine months, through several meetings of social organizations in 18 workshops, most of them regional and by organization, other plurinational and all organizations, with a format for drafting the law and seeking consensus on a single document" (Pacto de Unidad 2010).

In late November 2010, the Unity Pact presented its draft law to the Plurinational Legislative Assembly's special commission on the environment and began negotiations with the assembly on the final text (Pacto de Unidad 2010). The Law of the Rights of Mother Earth was formally adopted on December 21, 2010. In 2012 the Plurinational Legislative Assembly made further adjustments and passed the Framework Law of Mother Earth and Integral Development for Living Well. The differences between the Unity Pact's draft law, the 2010 law, and the 2012 law show how the Bolivian government progressively weakened the legal basis for RoN in Bolivia.

The Unity Pact's draft law is quite extensive and detailed. It addresses not only RoN but many other issues of top concern to Indigenous and *originario* groups that were not incorporated into Bolivia's constitution. Comprising twelve titles, the draft

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- details the law's scope, concepts, and principles
- defines Mother Earth's character and rights
- specifies the duties of the State and society toward Mother Earth
- develops an ecological and economic model consistent with RoN, which includes a comprehensive and participatory system for planning and accounting
- proposes an institutional framework for guaranteeing the rights of Mother Earth, including a Plurinational Council of Mother Earth, a Ministry of Mother Earth, and a Council of Mother Earth to serve as an instrument of coresponsibility in the coordination of public policies and the management of the Earth (Pacto de Unidad 2010)

The draft law also discusses Indigenous rights and their connection to RoN. In this regard, it addresses the concept of protected areas and defines the concepts of territory and territoriality, which are important to lowland Indigenous identity. Finally, the draft determines the economic regime that would follow recognition of RoN, defines mechanisms for defending Mother Earth (including incentives and sanctions), and discusses provisions governing the transition to a new RoN regime.

The 2010 Law of Mother Earth contains only a small portion of the Unity Pact's draft law. Indeed, it comprises just two titles. The first lists general principles, and the second lays out the legal character and rights of Mother Earth and the obligations of the state and society. It also requires the creation of a national ombudsman's office to protect Mother Earth, the Defensoría de la Madre Tierra, "whose mission is to ensure the validity, promotion, distribution and compliance of the rights of Mother Earth established in this Act" (Estado Plurinacional de Bolivia 2010, art. 10).

In sum, the 2010 Law of the Rights of Mother Earth includes only general language regarding principles and philosophy and omits the concrete elements proposed by the Unity Pact for applying this philosophy in practice. This point was made repeatedly by both supporters and opponents of the MAS government, who disregarded the law as a useful strategy. Numerous interviewees from both government and civil society made almost identical comments about the law being nothing more than "just poetry" and "not a real law."[6]

In 2012 the legislature passed the Framework Law of Mother Earth and Integral Development for Living Well. As its name implies, the law is focused

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on laying out the legal framework for Bolivia's development agenda. While it contains some of the flowery language related to Mother Earth from the 2010 Law of the Rights of Mother Earth, the Framework Law clearly weakens the idea of RoN by subsuming it under a broader development agenda that prioritizes natural resource extraction to finance social programs favored by MAS's socialist wing.

Specifically, the Framework Law weakens the rights of Mother Earth laid out in the 2010 law by stating that RoN must be considered through the lens of socioeconomic rights to economic development. Article 4 states that the rights of Mother Earth are a "subject of collective public interest" and cannot be realized independently. Rather, the rights of Mother Earth must be considered in combination with (and balanced with) three other sets of rights: (1) the collective and individual rights of Indigenous, *originario*, and campesino nations and peoples; (2) civic, political, social, economic, and cultural rights of the Bolivian people through holistic development; and (3) the right of urban and rural populations to live in a just and equitable society free from material, social and spiritual poverty (Estado Plurinacional de Bolivia 2012).

The primary focus of the Framework Law (and the resulting institutions and policies) is to promote a form of socioeconomic development that advances social justice (defined as the redistribution of wealth and political and cultural influence toward previously marginalized groups). In practice, government officials have invoked these socioeconomic rights to justify prioritizing natural resource extraction over environmental protection, saying that RoN will be given greater weight once poverty levels are diminished.[7] The resulting development policies have focused on greatly expanding natural resource extraction, expanding the agricultural frontier, and making agricultural land use more intensive. Indigenous rights have also been de-emphasized in the pursuit of this agenda. For example, the government has gutted prior consultation requirements in order to streamline extractivist and agricultural projects (Eichler 2019, Tockman 2018).

To the extent that Bolivia's government invokes the language of the rights of Mother Earth, it does so through its climate change policy and ties this to international climate change negotiations. The government never created the Defensoría de la Madre Tierra as was called for in the 2010 law. It did create the Plurinational Authority of Mother Earth in 2013

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after the passage of the Framework Law, but this department does not deal with enforcing RoN; rather, it is the department within the Ministry of Environment charged with addressing climate change. In fact, this is not even a new department. Rather, the government simply renamed a preexisting department that was dealing with climate change policy, presumably to comply with the new law. More important, this department's work is geared more toward international audiences than domestic ones; it is responsible for international climate change negotiations, where Morales's discourse emphasizes RoN, in contrast to his domestic discourse and policy.

The question of whether RoN exists independent of human rights, and particularly economic rights, is an important difference between Ecuador's and Bolivia's laws. By subsuming RoN under a broader set of socioeconomic rights, Bolivia's RoN laws are weaker than Ecuador's constitution, which requires that RoN be considered and guaranteed independent of human interest.

For these reasons, Bolivian civil society groups generally see the 2010 Law of the Rights of Mother Earth as too vague to be useful, and they see the 2012 Framework Law as departing so significantly from the Unity Pact's draft law that it no longer represents the views of Indigenous groups or the NGOs supporting them. The Framework Law is where the government operationalized the concept of RoN through law, but in doing so it greatly weakened the principles established in the 2010 law. Consequently, social movements and their supporters do not see it as a useful legal tool to invoke in their struggle. Moreover, RoN is not explicitly recognized in the constitution or in international law, while Indigenous rights are. For this reason, social movements who support RoN have chosen instead to frame their struggle in terms of Indigenous rights, invoking those laws in their legal struggle.

The Bolivia-Ecuador comparison highlights several important ways in which Bolivian RoN laws are weaker than Ecuador's, affecting the strategic logic of RoN advocates in civil society. Ecuador's constitution, of course, recognizes multiple rights that can be seen as competing with RoN, including socioeconomic rights like those mentioned in Bolivia's Framework Law. But Ecuador's constitution requires RoN to be considered and guaranteed independent of human interest. Moreover, the constitution portrays RoN as transversal, affecting all other rights.

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By contrast, Bolivian law requires RoN to be interpreted through the lens of human socioeconomic rights. And while the framework status of Bolivia's Framework Law gives it superior status, it is not the same as establishing RoN as a constitutionally guaranteed right. Ecuador's constitutional guarantee that RoN must be recognized independent of human interests and rights gives Ecuadorian civil society a stronger legal platform for demanding that courts consider how to balance the competing RoN and the rights of humans in any given circumstance.

CHANGING POLITICAL ALLIANCE STRUCTURES

Given their extractivist-based development agenda, why did Evo Morales and his supporters in MAS bother passing weak RoN laws rather than rejecting them outright? This question is related to the question of why Morales adopts the language of RoN in international discourse while undermining RoN in domestic policy.

The most persuasive argument comes from anthropologist Nancy Postero (2017). Morales's goal of capturing the state to pursue a redistributive development agenda clearly put him at odds with the Unity Pact's goal of disbanding the liberal state and replacing it with an alternative based on Indigenous concepts, values, and customs. Postero argues that Morales adopted the discourse of Mother Earth espoused by Indigenous intellectuals as a way to differentiate himself from the colonial past and brand himself as the representative of all Indigenous people—highland and lowland alike. This anticolonial branding gave Morales the broad constituency MAS needed to weaken the power of the preexisting political class. The strategy succeeded politically, but by the time the 2010 Law of the Rights of Mother Earth was adopted, the balance of power within MAS's governing coalition was changing, freeing Morales to alter his discourse.

To understand the seemingly hypocritical discourse and weakening of RoN over time, it is important to note that the MAS government during Morales's first term in office (2006–2010) comprised "three tendencies with projects that are not necessarily coincidental or harmonious, united by the personal leadership of Evo Morales" (Laserna 2010, 39). Roberto Laserna (2010) categorizes MAS affiliates during this first phase into three groups: the *indigenísta* group, the socialist group, and the populist group.

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The *indigenísta* group, led by then foreign minister David Choquehuanca, "carried the demands and ideas of the Katarista movement of the 1970s, pushing for Indigenous rights and recognition. . . . [It] utilized idealized versions of Andean culture to project an Indigenous image onto the government's economic projects, arguing that Bolivia's Indigenous peoples have solutions to the ills caused by Western capitalism" (Postero 2017, 34). This group had the most influence internationally and was responsible for Morales's international discourse about resolving the climate change crisis by ending capitalism and adopting a more harmonious, Indigenous relation to the Earth. The *indigenístas* were the ones most supportive of the rights of Mother Earth language and were responsible for the 2010 law getting adopted.

Socialists comprise the second group, represented by Vice President Álvaro García Linera. This group saw the government's role as replacing the country's neoliberal approach to development with one in which the state takes a strong role in the economy, especially "restoring natural resources as a basis of accumulation for national industrialization" (Laserna 2010, 39). This was the group driving the idea of expanding state-led extractivism and using the money to expand industrialization, reduce poverty, and expand economic opportunities for previously marginalized groups.

The third group is the populists, represented and led by Evo Morales. This group sought to mobilize highland social movements, particularly peasant unions and urban neighborhood associations, to undermine the power of the traditional political elite, thereby transforming Bolivian politics. According to Laserna (2010, 41) this group was not defined by its political orientation or ideology, but rather by its populist method of grassroots politics.

A key factor explaining the weakening of RoN in Bolivia is the changing alliance structures within MAS due to the triumph of the socialist and populist tendencies over the *indigenístas*. Following the adoption of the 2010 Law of the Rights of Mother Earth, most members of the *indigenísta* wing left the government, disillusioned by MAS's betrayal of their vision. These include individuals who were key brokers between the MAS government and the Unity Pact.[8] On June 22, 2011, they issued a manifesto that decried MAS policy and practice, accusing MAS of continuing neoliberal economic policies based on transnational extractivism, violating democratic

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principles, and abandoning the goal of constructing a plurinational state (Regalsky 2011). Once *indigenísta* intellectuals and many in the Indigenous base (as opposed to campesino and *originario* movements) left MAS, the constituency for RoN within the government was greatly diminished. This rupture happened in 2011, spurred by the TIPNIS conflict, which explains why the 2012 Framework Law prioritizes extractivist-based development over RoN.

MORALES'S STRATEGIC REFRAMING OF INDIGENEITY AND DECOLONIZATION

In many ways, the breakdown of the alliance between *indigenístas* and socialists in MAS mirrors the story in Ecuador. Rafael Correa similarly rose to power as the populist leader of Alianza Pais, a movement that combined Indigenous intellectuals and activists with socialists around a common agenda of replacing Ecuador's neoliberal development model with a more socially just alternative. Due to their place in Correa's coalition, Ecuadorian Indigenous movements had a substantial role in the Constituent Assembly, where they helped develop the constitution's RoN principles (Becker 2013). But the socialist wing of Alianza Pais became the dominant force in the legislature that was formed after the constitution was adopted. As chapter 4 noted, Correa and other socialists advocated expanding mining and oil extraction to finance poverty reduction programs, and this caused a split with Indigenous groups.

Both Correa and Morales strategically adopted Andean Indigenous concepts related to *pachamamismo* (the culture of Pachamama, or Mother Earth) and *buen vivir* into their rhetoric even as they pursued extractivist development to finance socialist poverty reduction policies (Sánchez Parga 2011). But they differed in how they responded to the tensions inherent in the alternative approaches to development. Correa responded by invoking RoN strategically and pushing back when RoN challenged his agenda. This gradually led to the development of RoN jurisprudence (see chapter 4). By contrast, Morales used framing strategies and symbolism to redefine extractivist development as decolonization and redefine environmental protection as the perpetuation of colonialism. This greatly restricted the ability of civil society to mobilize around RoN and insulated

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Morales from rhetorical entrapment domestically. Consequently, RoN advocates chose instead to invoke Indigenous rights, and particularly the right to prior consent, which was still consistent with the decolonization project enshrined in Bolivia's constitution.

It is beyond the scope of this chapter to detail thoroughly all the ways that Morales redefined indigeneity and decolonization to be consistent with extractivist-led development. Postero (2017) does this impressively, showing how in 2011, following the conflict over TIPNIS, Morales shifted away from the prior discourse that focused on the Unity Pact's original vision of decolonization as the restructuring of Bolivia's state, society, and economy to be consistent with traditional Indigenous values, concepts, and practices. Following 2011, and the exodus of *indigenísta* intellectuals, the MAS government reframed decolonization as a process of economic liberation for Bolivia's historically marginalized groups. Key to this economic liberation is national control over natural resources to redirect wealth away from foreign corporations to domestic social groups. In this way, state-controlled extractivist development becomes the means for economic emancipation through decolonization.

There is no doubt that Morales's ability to engage in this kind of reframing stems in part from his ability to present himself as the first self-identified Indigenous president (something Correa could not do), and from the fact that indigeneity is a highly malleable concept. As Postero writes, "Indigeneity and decolonization were the rallying cries for the Morales revolution. . . . Yet, as the MAS government consolidated its control and defeated its political adversaries on the right, its support for Indigenous self-determination waned. Morales continues to invoke Indigenous history and culture, but he does so in performance of a state-controlled version of indigeneity that legitimizes state power" (2017, 4).

BOLIVIA'S DIVIDED INDIGENOUS MOVEMENTS

This framing of decolonization as economic liberation is one that resonates strongly with Bolivia's urban population and communities in the highlands, who comprise roughly 70 percent of the population. As Postero writes,

> The majority of Bolivians, and that includes many Indigenous people, are proud of the nationalization [of gas and other natural resources]. . . . They *want* lithium

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to be developed, and they want their standards of living to improve. This is part of *pachakuti*, the turning of the timetable, the change of destiny. This is the time for the formerly poor to receive their fair share. A large number of Indigenous Bolivians live in cities, surviving in difficult economic situations. For them, the most important goal of the new decolonized state is to pass the benefits of national patrimony to the poor who were traditionally barred from those benefits. They are not as concerned about environmental damage to rural lands as they are about overcoming poverty. (Postero 2017, 111, emphasis in the original)

The story is much different for lowland Indigenous groups who live in the rural territories targeted by extractive industries. Their territory is an integral component of their identity and culture. Consequently, environmental protection in their territory is intricately tied to the protection of their communities. This is why government plans to construct a highway through TIPNIS, seen as the first step toward extractivist intervention, sparked such a large backlash and ultimately led to *indigenístas* leaving MAS and thus the dissolution of the Unity Pact in 2011.

In sum, the division between Bolivia's highland and lowland Indigenous groups, which goes back many decades and results from distinct trajectories of political development, marks another important difference between Bolivia and Ecuador. Ecuador has one of the most highly organized Indigenous movements in Latin America and, despite some internal divisions, it unites Indigenous movements from both the highland (Andes) and lowland (Amazonian) regions (Becker 2011, Lucero 2008, Yashar 2005). This difference in levels of organization and collaboration between highland and lowland movements (which affects the ability to mobilize collective action nationally) likely explains part of the variation in the two countries' civil-society-led efforts to promote RoN.

INSULATING MORALES FROM RHETORICAL ENTRAPMENT

In addition to exacerbating divides between Bolivia's highland and lowland Indigenous groups, undermining their ability to mobilize collectively in support of RoN, MAS's strategic redefinition of decolonization also helps explain why Morales's party did not invoke RoN instrumentally, as Correa did in Ecuador.

A key aspect of MAS's redefinition of decolonization is the way it devalues any discourse advocating environmental conservation, labeling this as

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a form of imperialism and colonization. When Indigenous intellectuals, lowland Indigenous movements, and environmental NGOs criticize the government's extractivist development agenda, the government frames environmental protection, including the concept of national parks like TIPNIS, as an imperialist plot to keep Bolivians poor and underdeveloped. MAS regularly attacks environmental NGOs and lowland Indigenous activists as counterrevolutionary agents of foreign capitalist interests (Hill 2017; Matejova, Parker, and Dauvergne 2018). For example, Vice President García Linera accuses these groups of using foreign funds "to promote a 'transnational imperial policy' of environmental protection, in which countries of the global south forego opportunities for development and become 'park rangers' for the industrialized north" (quoted in Achtenberg 2015). Bolivia's government has used this argument to threaten and harass environmental NGOs. Indigenous groups that protect ecological preserves like TIPNIS have been labeled as terrorists, jailed, and beaten by police.

In interviews, self-described "defenders of Mother Earth" noted that framing their struggle in terms of RoN was strategically problematic for two reasons. First, it greatly increased the danger to protesters, increasing the likelihood of a state backlash. Second, it was perceived as less likely to mobilize sympathy and support from other Bolivians, and particularly those in urban centers and the highlands, which would be necessary to exert political pressure on the MAS government.

For this reason, social movements seeking to defend TIPNIS and other ecological preserves have chosen instead to frame their struggle as a defense of Indigenous rights. By appealing for Indigenous autonomy and justice, they are able to more persuasively situate their political demands within the decolonization project described in Bolivia's 2009 constitution, which explicitly recognizes Indigenous rights but not RoN. Similarly, Indigenous rights are recognized in international law, unlike RoN. Based on these factors, lowland Indigenous movements and their supporters concluded that it would be strategically counterproductive to invoke the country's RoN laws. They were on stronger social, political, and legal footing by invoking Indigenous rights to self-determination and autonomy as a tool for protecting RoN. As one leading Indigenous lawyer noted, "if we have autonomy, the rights of Mother Earth will be protected."[9]

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In addition to helping explain why Bolivian social movements have not invoked RoN, MAS's strategy of redefining the country's decolonization project also explains why the government has not invoked RoN instrumentally. To discredit and undermine social movements opposed to the government's extractivist development agenda, the government has framed efforts to protect the country's ecological preserves as a form of colonialism. This has forced the government to avoid invoking the rights of Mother Earth to pursue its own interests domestically, even as it regularly invokes those rights in international policy arenas.

DIFFERING CIVIL SOCIETY STRUCTURES

The final question that remains is why we do not see environmental NGOs and lawyers working below the radar to gradually build RoN jurisprudence, as happened in Ecuador. We argue that this variation can be explained by variations in the countries' civil society structures—specifically, variations in the strength of environmental movements and Bolivia's lack of an organized community of lawyers educated in RoN.

In Ecuador the development of RoN jurisprudence is propelled by an alliance of Indigenous movements, environmental NGOs, and environmental lawyers. In Bolivia it was primarily Indigenous groups, specifically lowland organizations and Indigenous intellectuals, that advocated for the rights of Mother Earth. Indigenous advocacy for RoN provides a common link between Bolivia and Ecuador and explains the similarities in how RoN laws emerged and were originally framed in the two countries. But the relative scarcity and weakness of environmental NGOs and lawyers in Bolivia helps explain the variation in implementation.

Ecuador has one of the strongest environmental movements in Latin America, dating back to the 1970s (Kauffman 2017, 88–89). During the 1980s and 1990s, the number of Ecuadorian environmental NGOs exploded, fueled by a growing interest among Ecuadorians in conserving their natural patrimony and a stream of money from international NGOs interested in protecting Latin America's tropical forests (Ortiz Crespo 1998). Ecuador's environmental movement includes radical NGOs like Acción Ecológica that oppose a development strategy based on the marketization and exploitation

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of natural resources. Instead they advocate a development strategy based on environmental justice, RoN, coexistence with the land, and the Andean Indigenous cosmovision of the universe. Since its founding in 1986, Acción Ecológica has mobilized popular opposition to industrial mining, logging, and oil exploitation, particularly in the Amazon rain forest. In this it found common cause with Ecuador's powerful Indigenous movement. The alliance between urban environmental groups and Indigenous and campesino organizations made Ecuador's environmental movement one of the strongest in Latin America.

In addition, Ecuador has developed a robust "epistemic community" of environmental lawyers who have spent decades developing the legal philosophy behind RoN (Haas 1992). These efforts date back at least to the early 1990s, when Ecuadorian citizens sued Texaco in a US federal court for oil pollution in the northern Ecuadorian Amazon. During the lawsuit, Indigenous groups, environmental NGOs like Acción Ecológica, and environmental lawyers discussed ways of codifying for Western legal purposes the Indigenous cosmovision that Nature is sacred, possesses its own rights, and is part of a living community in which humans exist (Martin 2011). In the early 2000s, these discussions were linked to the global discourse on RoN through transnational networks of antiextractivist organizations like Oilwatch (Martin 2011). For over a decade these ideas continued to be developed by Ecuadorian legal scholars at such institutions as Simón Bolívar Andean University and the Pontifical Catholic University. Law programs in these and other universities trained a new generation of lawyers knowledgeable about RoN. Ecuador's RoN legal community has now developed to the point where two of its members—Ramiro Ávila and Augustín Grijalva—now sit on the Constitutional Court of Ecuador.

While the concept and original impetus of RoN in Ecuador arguably stems from Indigenous movements, civil society's efforts to implement Ecuador's constitutional RoN provisions through lawsuits were, until recently, largely driven by Ecuador's environmental NGOs and environmental lawyers. The efforts to strategically identify lawsuits capable of strengthening RoN jurisprudence has been coordinated through the Ecuadorian Coordinator of Organizations for the Defense of Nature and the Environment

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(Coordinadora Ecuatoriana de Organizaciones para la Defensa de la Naturaleza y el Medio Ambiente, or CEDENMA), an umbrella organization of Ecuadorian NGOs dedicated to environmental protection. CEDENMA serves as a claimant on many of the civil society lawsuits invoking RoN. Not coincidentally, the woman who coordinates CEDENMA, Natalia Greene, also serves as the coordinator of the Global Alliance for the Rights of Nature, a transnational network of organizations dedicated to promoting RoN globally.

By contrast, Bolivia's environmental movement is relatively weak, marginalized, and disconnected from the country's Indigenous movements.[10] While Bolivia's environmental movement has always been weaker than Ecuador's, the Bolivian government's attack on environmental NGOs as agents of foreign colonialism has greatly weakened and divided these NGOs (Achtenberg 2015). One of the few domestic environmental NGOs left in Bolivia is the Bolivian Forum for the Environment and Development (Foro Boliviano Sobre Medio Ambiente y Desarrollo, or FOBOMADE). As Patricia Molina, FOBOMADE's director general, explains about Bolivia's environmental NGO community, "We have never been very strong in financial terms, our strength has always been our coherence and in the actions we have taken. But we are weakened and have gone through many difficult moments. We are beaten because there are currently many problems in the relationship of NGOs."[11]

In addition, Bolivia lacks a robust and highly organized network of environmental lawyers with the strong knowledge of RoN jurisprudence that would be necessary to systematically build jurisprudence through strategic lawsuits, particularly working below the radar.[12] There are, of course, organizations of lawyers working to oppose the government's extractivist agenda; the largest and most established is the Center for Legal Studies and Social Research, an NGO of lawyers who advance human rights and work closely with lowland Indigenous movements. When asked why they do not invoke the Law of the Rights of Mother Earth, they laughed and repeated the oft-heard phrase that the law is not really a law, but "just poetry." When pressed, one lawyer for the center expressed his preference for Indigenous rights by arguing that "RoN is too vague and expansive. With Indigenous rights you have a concrete group demanding a concrete right."[13] Ecuador's experience shows that RoN can be applied in concrete

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ways when lawyers understand the jurisprudence behind the law. Conversely, the perception by this and other lawyers in Bolivia arguably reflects their training in human and Indigenous rights rather than in RoN.

CHAPTER SUMMARY

Together, this chapter and chapter 4 compare the implementation of RoN laws in two countries that structured their laws according to the Nature's rights model. While RoN jurisprudence gradually developed in Ecuador, RoN exists only on paper in Bolivia. By comparing the politics surrounding implementation in Bolivia and Ecuador, these chapters highlight several important structural factors and strategies that shape the processes through which new norms like RoN become institutionalized and put into practice. It shows the inadequacy of crediting Bolivia's lack of implementation to the government's development agenda alone. Despite facing similar obstacles, RoN jurisprudence gradually strengthened and was enforced in Ecuador, while it was ignored in Bolivia. To explain this variation, we have examined the structures and strategies shaping the political struggles in each country between sociopolitical forces backing extractivist development and those supporting RoN.

In Ecuador, RoN supporters overcame political opposition by the government and a lack of knowledge among judges using a three-part strategy: (1) working below the radar to develop jurisprudence through low-profile local cases, (2) training lawyers and judges, and (3) mobilizing social pressure on the government to adopt the rhetoric of RoN. This latter strategy made the government vulnerable to rhetorical entrapment, prompting it to invoke RoN instrumentally (Schimmelfennig 2001). This had the unintended consequence of raising awareness of RoN among judges and strengthening RoN jurisprudence.

By contrast, Bolivian civil society did not engage in these three strategies; it instead framed its struggle against extractivist development in terms of Indigenous rights. Nor did Bolivia's government invoke RoN in its domestic discourse, despite doing so in international discourse. Based on the case comparisons, we conclude that this variation can largely be explained by (1) differences in how the two countries' RoN laws situate RoN in relation to competing economic rights; (2) variations in Bolivia's

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and Ecuador's civil society structures, particularly regarding the cohesiveness of highland and lowland Indigenous groups, the strength of environmental movements, and the presence of legal communities trained in RoN jurisprudence; and (3) each government's strategy for responding to the tension between RoN and the government's development agenda. Ecuadorian president Rafael Correa responded by invoking RoN instrumentally. By contrast, Bolivian president Evo Morales redefined the concepts of indigeneity and decolonization to justify state-led extractivist development. In doing so, he redefined environmental protection as a form of colonization, forcing him to avoid RoN rhetoric in domestic discourse. This insulated Morales from rhetorical entrapment and made it difficult for Indigenous groups to invoke RoN, leading them instead to invoke Indigenous rights.

The Bolivian case also highlights a weakness of the guardianship arrangement in the Nature's rights model. While anyone can represent Nature to protect its rights, no one is obligated to do so. If there is no institutional framework created to enforce RoN through regulatory policy, such enforcement requires someone to voluntarily undertake a lawsuit to protect RoN. Under the best of circumstances, this can prove difficult due to problems with collective action: the costs are concentrated (lawsuits are expensive) and the benefits are diffuse. In places like Bolivia there can be additional costs to personal security. Bolivia shows that RoN jurisprudence will likely not develop in this model unless people take action to force it, and the obstacles to doing so can be great.

Chapter 6 will examine how a different guardianship arrangement can fundamentally change the dynamics of implementing RoN, and Earth jurisprudence more broadly. It shows one example of how Earth jurisprudence can be implemented when the legal personhood model is used to create space for an Indigenous group (in this case, the Tūhoe iwi in New Zealand) to recover ancestral knowledge and customs consistent with Earth jurisprudence.

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6

MANAGING PEOPLE FOR THE BENEFIT OF THE LAND IN NEW ZEALAND

In 2014, New Zealand's Te Urewera Act was adopted, recognizing the forest Te Urewera as a legal subject with "all the rights, powers, duties, and liabilities of a legal person" (New Zealand Parliamentary Counsel Office 2014a, art. 11). This law emerged from treaty settlement negotiations resolving historical Treaty of Waitangi claims of the Tūhoe iwi (tribe) in relation to Te Urewera, their homeland. It made New Zealand the world's third country (after Ecuador and Bolivia) to adopt a national law recognizing rights of Nature (RoN).

The Te Urewera Act is an interesting case of RoN because it did not arise from RoN activism. In contrast to Ecuador and Bolivia, where Indigenous movements played a central role in promoting RoN, New Zealand's Tūhoe iwi continue to express concern over the emphasis on rights, a Western legal construct that historically has been used to marginalize Māori people. Rather, legal personhood was proposed by New Zealand Crown negotiators as a tool for overcoming obstacles plaguing settlement negotiations.

Not coincidentally, the Te Urewera Act pioneered a new model of RoN—what we call the legal personhood model—that differs greatly from the Nature's rights model adopted in Ecuador and Bolivia. Rather than recognizing rights for all of Nature, the Te Urewera Act recognizes a particular ecosystem (the forest, Te Urewera) as a legal person. It does not delineate unique rights for the ecosystem, but extends human rights and

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liabilities held by all legal persons (e.g., the rights to own property, incur debts, petition the courts and administrative agencies, etc.). Rather than rights, the act emphasizes human responsibility to care for the forest. Specific guardians are not only appointed to speak on behalf of the ecosystem but are obliged to do so in both legal and policy arenas. Moreover, guardians are embedded in new governance institutions charged with managing the ecosystem in an integrated way that recognizes it as a living being and ensures its health and well-being.

In chapter 1 we discussed how the ultimate goal of the RoN movement is to shift the paradigm underlying human legal, political, and socioeconomic systems (and consequently the systems themselves) to be consistent with Earth jurisprudence. In the Nature's rights model, RoN laws seek to advance this paradigm shift by recognizing unique RoN, which forces a rethinking of humans' relationship to Nature. Implementation has largely occurred through lawsuits seeking to rectify past and imminent violations of these rights (see chapter 4). By contrast, in New Zealand's Te Urewera Act, Earth jurisprudence principles are not reflected in the RoN provisions (which merely grant legal personhood) but rather are contained in separate legal provisions that recognize the Māori understanding of the forest ecosystem and humans' relationship to it. RoN implementation happens not through lawsuits but through the creation of a new governance system tasked with governing the forest ecosystem according to traditional Māori knowledge, values, and customs that are consistent with Earth jurisprudence.

This chapter examines the politics behind the design of the Te Urewera Act and the resulting new governance system created in Te Urewera.[1] One purpose is to show what implementation of the legal personhood model looks like when applied to territory traditionally controlled by Indigenous peoples. A second purpose is to explore the relationship between legal personhood for Nature and Earth jurisprudence in such cases. We argue that when applied to Indigenous-controlled territory, legal personhood for Nature is useful primarily for creating a legal firewall blocking the preexisting anthropocentric legal framework in order to make space for a new governance arrangement consistent with Earth jurisprudence principles. Legal personhood is not the only way to create this firewall. One could simply recognize and protect the rights of Indigenous peoples to recover

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their ancestral knowledge and customs. But in the Te Urewera case, legal personhood for Nature served as a useful tool.

We also use this chapter to illuminate the relationship between RoN and Indigenous rights. We argue that, while RoN is a foreign concept to many Indigenous groups, the Te Urewera case illustrates how RoN laws can be compatible with Indigenous rights (like self-determination and preservation of culture) when such laws are used as a tool for empowering Indigenous peoples to recover ancestral knowledge and practices consistent with Earth jurisprudence.

After providing a brief history of Te Urewera and the process producing the 2014 Te Urewera Act, the chapter describes key elements of the act and discusses what legal personhood for Nature means for New Zealand's government and the Tūhoe iwi. It then describes the law's implementation over the last five years to show one example of what it looks like to put Earth jurisprudence into practice through the legal personhood model. By comparing the new governance approach with how Te Urewera was previously managed by New Zealand's Department of Conservation (DOC), the chapter shows how RoN laws incorporating Earth jurisprudence principles can produce different governance outcomes from conventional environmental laws based on Western notions of conservation.

THE HISTORY OF TE UREWERA

To understand how Earth jurisprudence is being implemented through the Te Urewera Act, it is necessary to have an appreciation for the Tūhoe people's relationship with the forest and their 150-year struggle to restore this relationship. Te Urewera is a forested, hilly ecosystem covering about 821 sq mi on the North Island of New Zealand. It is the historical homeland of the Tūhoe iwi, who traditionally relied on the forest for all their needs. They consider the mountain Maungapōhatu to be sacred and claim to be descended from the rugged ranges of Te Urewera and the white mist clouds that cover them, earning them the nickname Nga Tamariki o te Kohu (Children of the Mist).

Because of Te Urewera's remote location, the Tūhoe iwi had little direct contact with European settlers until the 1860s. They did not sign the 1840 Treaty of Waitangi, an agreement between the British Crown and

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about five hundred Māori chiefs from the North Island, meant to establish British sovereignty over the island. Though the Tūhoe never signed the treaty, the Crown government nevertheless assumed sovereignty over their territory (Waitangi Tribunal 2017, pt. 1, sec. 3.3). The Tūhoe have been struggling for self-determination (*mana motuhake*) since the 1860s, when the Crown first came to Te Urewera.

During the 1860s and 1870s, Te Urewera became the site of repeated brutal invasions by the Crown military pursuing Māori rebels who took refuge in Te Urewera's remote forests. Facing famine as a result of the Crown's scorched-earth tactics, Tūhoe leaders agreed to hand over rebels in exchange for the Crown respecting Tūhoe's internal autonomy (Binney 2009). In 1896 the New Zealand Parliament passed the Urewera District Native Reserve Act to provide for Tūhoe self-government within a formally constituted tribal district, but the government's promise of self-government was never realized (O'Malley 2014). During the 1920s New Zealand's government systematically acquired and consolidated land in and around Te Urewera.

By the 1930s the Tūhoe had lost all but 16 percent of their historic lands, and most of the remaining land was unsuitable for farming (New Zealand Parliamentary Counsel Office 2014b, sec. 8[9]). Without sufficient land to support their population, large numbers of Tūhoe moved out of the area. In 1954 the government established Te Urewera as a national park to be managed by the DOC. This restricted the Tūhoe people's access to customary resources and obstructed their ability to develop lands adjoining or enclosed by the Park. Consequently, most Tūhoe iwi (roughly forty-five thousand) live outside Te Urewera and have lost their connection to the land and traditional customs. Many of the roughly five thousand Tūhoe that remain live on the edges of the forest and suffer from severe socioeconomic deprivation.

THE POLITICS CREATING TE UREWERA'S RIGHTS OF NATURE LAW

Although the Tūhoe never signed the Treaty of Waitangi, they decided that participating in the treaty settlement process begun in the 1990s was the best way to pursue their goal of self-determination and redress

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for historical wrongs. In 2002 the Tūhoe brought various claims to the Waitangi Tribunal, which held eleven hearings on Te Urewera between 2003 and 2005. The tribunal issued its report in six parts between 2009 and 2015. It acknowledged numerous instances of the Crown breaking its promises of self-governance, thus illegally subjecting the Tūhoe to extensive land loss. It also recognized that the creation of Te Urewera National Park came to symbolize dispossession of Tūhoe land.

In 2007 the roughly thirty Tūhoe *hapū* (clans) authorized a negotiating team, Te Kotahi ā Tūhoe, to conduct treaty negotiations on behalf of the entire iwi.[2] Iwi members spent a great deal of time developing their fundamental objectives before negotiating, and identified three elements necessary for an agreement: (1) the return of Te Urewera; (2) autonomy for Tūhoe management of Te Urewera; and (3) the maximum amount of redress allowed by the Crown.[3]

Crown-Tūhoe negotiations began in 2008 and initially dealt with the Tūhoe demand for the return of Te Urewera, which the Crown interpreted as a conflict over title and ownership. Te Urewera's status as a national park greatly complicated the settlement process, however. Pākehā (non-Māori New Zealanders) are famously proud and protective of their national parks, and for a time the government took negotiation of national park land off the table.

The Crown initially proposed a "gift-back" scheme that had worked in some earlier settlements with other iwi.[4] The Crown would transfer title of the forest to the Tūhoe, but after three months it would automatically be "gifted back" to the Crown to manage for the public's interest. The Tūhoe iwi rejected this as inadequate to achieve their goal of reconnecting themselves to their land. In 2010 the Crown negotiating team proposed another experiment that had succeeded in a previous settlement: vesting title in a Tūhoe ancestor. The Tūhoe initially agreed, and settlement appeared to be within reach, but at the last minute Prime Minister John Key pulled out of the agreement. There was a popular backlash against transferring ownership of a beloved national park to the Tūhoe, and Prime Minister Key famously stated that doing so was "a bridge too far" (*Dominion Post* 2012).

In 2011 a breakthrough came when Crown negotiators realized that the Tūhoe's demand for the return of Te Urewera did not necessarily

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mean the Tūhoe wanted to own it legally (i.e., have title). In the Tūhoe worldview, one cannot truly own Nature, and the Tūhoe never specifically asked for ownership. Rather, they asked for the return of the land, which they do not equate with ownership. As Kirsti Luke (2018), one of the lead Tūhoe negotiators for the treaty settlement and subsequently the CEO of Te Uru Taumatua (the organization representing the Tūhoe iwi), explained,

> Ownership represented a very big challenge and hurdle, and stood in the way of a Tūhoe way of life. Ownership and the owning of Te Urewera has been a mechanism to destroy belonging and care, and therefore community. Ownership grants entitlement without having earned it. It grants rights without having earned them. Ownership does not value kinship with the things around us. It means that we do not care enough. It does not let us see wide enough the impacts that we therefore have on the land. Rather, it feeds and nurtures self-interest. . . . The impact of this is that it breeds very transactional relationships between humans and the land, and the very thing that breeds transactional relationships between humans and each other. Transactional relationships do not grow community.

It occurred to Crown negotiators that legal personhood might provide a technical way to sidestep the issue of ownership. If Te Urewera was granted legal personhood, ownership of the land could be vested in Te Urewera itself. Tūhoe negotiators accepted legal personhood for Te Urewera as an imperfect approximation of recognizing the forest as a whole, living, spiritual being, but likely the best possibility within a European legal framework. It also began to shift discussions away from the idea of Te Urewera as property.

Once the ownership issue was resolved, negotiations focused on who would speak for the forest and how it would be governed. These negotiations opened a window of opportunity for codifying Māori conceptions of Nature, and humans' responsibility to it, into New Zealand law.

CODIFYING MĀORI CONCEPTIONS OF NATURE AND HUMAN RESPONSIBILITY

The Tūhoe, like all Māori iwi, trace their ancestral lineage to a common ecosystem—in their case, Te Urewera, which they view as a living, spiritual being. The Tūhoe do not emphasize the RoN concept, since "rights" are a foreign concept stemming from the European legal system. Rather,

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they emphasize their responsibility of guardianship (*kaitiakitanga*) for Te Urewera, to which their iwi is tied.[5] They consider it an ancestor, and their focus is their responsibility to care for their ancestor in order to maintain their ties to it.

For this reason, both Crown and Tūhoe negotiators assert that the most important part of the Te Urewera Act is not the legal personhood provision, but the provisions recognizing the Māori view of the forest and the related guardianship arrangement. Part 1 of the act begins by recognizing Te Urewera as a living being with metaphysical characteristics and ties to the Tūhoe iwi:

> Te Urewera is ancient and enduring, a fortress of Nature, alive with history; its scenery is abundant with mystery, adventure, and remote beauty. Te Urewera is a place of spiritual value, with its own mana and mauri. Te Urewera has an identity in and of itself, inspiring people to commit to its care. For Tūhoe, Te Urewera is Te Manawa o te Ika a Māui; it is the heart of the great fish of Maui, its name being derived from Murakareke, the son of the ancestor Tūhoe. For Tūhoe, Te Urewera is their ewe whenua, their place of origin and return, their homeland. (New Zealand 2014a, sec. 3)[6]

Section 17 of the act creates statutory guardians—the Te Urewera Board—whose purpose is "to act on behalf of, and in the name of, Te Urewera." For the first three years (2014–2017), the board comprised eight members, four of whom were appointed by the Tūhoe and four by the Crown government. Subsequently, the composition shifted to nine members: six appointed by the Tūhoe and three by the Crown. Once appointed, the board members are required to represent the interests of Te Urewera, not the Crown or the Tūhoe.

The act also removes Te Urewera from the national parks system, and consequently transfers governance authority from the DOC to the Te Urewera Board. With full autonomy to govern Te Urewera, the board is required to create a Te Urewera management plan that reflects Tūhoe customary values and law. Section 18(2) of the act states that the board must "consider and give expression" to "Tūhoetanga" and "Tūhoe concepts of management" such as *rāhui* (putting in place a temporary ritual prohibition or limitation of use); *tapu me noa* (identifying sacred places requiring respectful behavior, or *tapu*, recognizing that when the *tapu* is lifted from the place, the place returns to a normal state); *mana me mauri*

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(the sensitive perception of a living and spiritual force in a place), and *tohu* (which connotes the metaphysical or symbolic depiction of things). Section 20 makes it clear that the board "must consider and provide appropriately for the relationship of iwi and hapū and their culture and traditions with Te Urewera when making decisions" (New Zealand Parliamentary Counsel Office 2014a).

For the Tūhoe, the act's provisions addressing Te Urewera's metaphysical characteristics, legal personhood, and guardianship constituted an acceptable approximation for their demands that Te Urewera be returned and for self-determination (*mana motuhake*). New Zealand's government also agreed to provide an historical account of wrongs committed against the Tūhoe, a formal apology, as well as financial and cultural redress worth NZ$170 million. These conditions formed the basis of a treaty settlement that was signed on June 4, 2013, after being ratified by all Tūhoe members. Aspects of the settlement relating to the status and governance of Te Urewera were enacted through the 2014 Te Urewera Act. All other aspects of the settlement, regarding financial and cultural redress, were given effect by the Tūhoe Claims Settlement Act.[7]

THE MEANING OF LEGAL PERSONHOOD FOR TE UREWERA

Among RoN activists and legal scholars, the Te Urewera Act gained international recognition for recognizing an ecosystem as a legal subject with rights. For the Tūhoe, however, the legal personhood provision was important not because it granted rights to the forest but because it removed the preexisting legal framework, providing space for the Tūhoe to create a new governance system rooted in Indigenous culture and the principles of Earth jurisprudence.

Tamati Kruger, one of the lead Tūhoe negotiators for the treaty settlement and later the chair of the Te Urewera Board, explains that by removing the notion of Te Urewera as property, the legal personhood provision opened a space for the Crown to better understand Tūhoe aspirations in a way that was less threatening: "Property rights in Western society is sovereignty. That is its manifestation. So, when you neutralize that, the Crown then realizes you're not competing over sovereignty. The Crown is then

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open to suggestions because you're not here to overthrow the government and take sovereignty. So, you are removing something that's been there in the mind-set for centuries, over various civilizations. You are removing that. And once it's off, then there's freshness of ideas."[8]

Luke explains the purpose and impact of the legal personhood provision this way:

> Our reason for enabling a legal personality to apply to land was to withdraw the law—to filter out the motives, the agendas, the objectives that have been created by somebody else's law. . . . This legal personality is a piece of law to remove human transactions, human thinking, human self-interest from land in order that our Indigenous beliefs, the care, the kinship, the connectedness, the want to share things with each other, to hold things in common, to be concerned to build a future made up of strong, giving people. Strong humans are the things that manage excessive lifestyles. Technology does not. . . . And we have seen no other way than to step into somebody else's courtroom, and ask that court to remove their rules in order that mine can apply. So Te Urewera is not property. An ownership situation can only ever see Mother Earth as property, and property is something that is human made. Te Urewera is not property. Te Urewera is not real estate. Te Urewera is my mother. She gives me life and continues to. She is the thing that gives me enjoyment. She reminds me that I am connected to these plants and other creatures, and that I love them, and that they love me. These are things that humans are forgetting how to do. (Luke 2018)

CREATING A NEW GOVERNANCE SYSTEM FOR TE UREWERA

To understand how guardianship is practiced under the Te Urewera Act, it is necessary to understand how the Tūhoe reorganized themselves as a result of the treaty settlement process. The basic political unit within Māori society is the *hapū*, a collection of family groupings (*whānau*) connected through their ties to a common ancestor. *Hapū* members organize themselves according to *marae*—ancestral homes where people meet to discuss issues, maintain the community, and provide social support.

Traditionally, Tūhoe political authority is highly decentralized, with *hapū* having a great deal of decision-making authority. Nevertheless, Tūhoe *hapū* organize themselves into four tribal councils, each of which represents the *marae* in one of four valleys in and around Te Urewera. These valleys include Ruatahuna, Ruatoki, Te Waimana, and Waikaremoana.

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In 2011 the Tūhoe created a more centralized authority structure to better navigate the treaty settlement process on behalf of the entire iwi. Te Uru Taumatua was established as the operational organization for the Tūhoe iwi, representing the "Tūhoe nation and the lands and wealth held in common for Tūhoe" (Tūhoe Iwi, n.d.-b).[9] The governing board comprises seven members representing all four tribal councils, with *marae*/*hapū* members electing their representatives. While the Te Urewera Board represents Te Urewera, Te Uru Taumatua represents the Tūhoe iwi. Together these organizations administer the new governance system in Te Urewera following the 2014 Te Urewera Act.

MANAGING PEOPLE FOR THE BENEFIT OF THE LAND

As has been noted, the Te Urewera Act requires the Te Urewera Board (the statutory guardians) to develop an integrated ecosystem management plan for Te Urewera. In September 2017 the Te Urewera Board presented its plan, titled *Te Kawa o Te Urewera* (hereafter, *Te Kawa*), which provides the foundation for a governance system based on Tūhoe values and culture and shares the principles of Earth jurisprudence described in chapter 1. As Te Urewera board chairman Tamati Kruger explains, "Te Kawa does not work the same way as other management plans, which focus on setting rules and stock-taking. That traditional approach can frame Nature as a set of discrete resources to be managed and used. Te Kawa is different. It asks us to stop and reflect on Te Urewera and what that means as a living system we depend on for survival, culture, recreation, and inspiration. Te Urewera has its own identity that is legal, but also physical, environmental, cultural and spiritual" (quoted in Walker 2017, 1).

This quote captures a central tenet of Earth jurisprudence—that human laws and governance systems should conform to the natural laws (e.g., the laws of physics, chemistry, biology, and other sciences) governing how ecosystems function. This natural order is studied in Western science by ecological scientists, who examine how interactions among organisms and their biophysical environment regulate and sustain living ecosystems. For many Indigenous cultures, and Earth jurisprudence scholars like Thomas Berry (1999), the natural order of the universe contains metaphysical elements as well. Regardless, a common thread in both Earth jurisprudence

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and Tūhoe cosmovision is that knowledge of the natural order comes from an intimate relationship with "the land" (i.e., the natural world).

Kirsti Luke expresses this idea well in an interview with Hal Crimmel and Issac Goeckeritz. After asserting that people's relationship to the land mirrors that of a child relating to his or her parent, the "Earth mother," Luke says that culture is a "kinship connection" that comes from being born to the same land. It is in this sense that the Tūhoe see themselves as having kinship ties to all the members of Te Urewera's ecosystem. Luke adds, "A culture has its idea about the order of the universe—where we all come from and therefore an idea about the purpose of life and living it. When you are born to wherever it is that you were born on the planet that there then becomes the thing that you are connected to. That there is the thing that tells you the order of the universe" (quoted in Crimmel and Goeckeritz 2020).

Tūhoe culture and Earth jurisprudence are also similar in asserting that an ecosystem's natural order is so complex that humans are incapable of fully understanding it. Consequently, humans' goal should be to manage their behavior to maintain balance in this order. *Te Kawa* acknowledges that "Te Urewera's living system has a balance and a rhythm that is mysterious and imperceptible to human senses. She is timeless and pulses to a beat of her own. Understanding, then, what is a priority or urgency by Te Urewera opinion is somewhat illusory" (Te Urewera Board 2017).

Because Nature's complexity is beyond human comprehension, Earth jurisprudence says humans should structure their governance systems to fit into this order as best they can rather than trying to bend Nature to human will. The latter is folly, since humans are embedded in intricate, interdependent relationships with all other members of the ecosystem. Trying to control Nature (e.g., by treating its elements merely as objects to be exploited or pests to be eliminated) risks upsetting the balance that sustains ecosystems' functioning, producing disastrous consequences for all its members, including people. When talking about maintaining balance in the Te Urewera ecosystem, Luke notes, "That is also what I mean by being connected. Just because you don't understand the purpose of that bug or that insect does not mean they don't have a purpose that isn't working for your interest. Our miniscule brain *cannot* perceive what is the might and sophistication of Nature. We are never going to understand it

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all. Yet without me needing to understand everything, the world exists" (quoted in Crimmel and Goeckeritz 2020, emphasis in the original).

While humans may not be able to understand the full complexity of Nature, they can, through experience and a focus on Nature, understand that reciprocal relationships tie them to the land and confer responsibilities for its care. Because humans are part of surrounding ecosystems, they will, of course, have an impact on them. People, too, must live off the land; it is their home. The Tūhoe reject the Western conservationist view of Nature as a museum that is to be seen but not touched. But reciprocal relationships and respect for Nature create a responsibility for humans to limit their activities such that they will not overwhelm other members of the ecosystem—and potentially the system itself. For this reason, *Te Kawa* calls for the Tūhoe to prioritize "the common worry for excessive use by human activity and perhaps also our inactivity to better our habits for living with Te Urewera" (Te Urewera Board 2017).

This idea that humans cannot control Nature, but have an interest in managing their own behavior in a way that maintains balance and order in the ecosystems on which they depend for life, is captured by a phrase so often repeated in Te Urewera that it is practically a mantra: "Te Kawa is about the management of people for the benefit of the land—it is not about land management" (Te Urewera Board 2017). This principle of managing people for the benefit of the land, rather than managing land for the benefit of people, is the main difference between *Te Kawa* and the New Zealand government's previous approach in Te Urewera. According to Luke, "One of the practical things that we have done is we have giggled and laughed and poked fun at the New Zealand government's approach to conservation management. The government has for a very long time promoted the idea that humans can manage the land, that somehow human superiority knows something that land and Nature does not. We've outlawed that in Te Urewera" (Luke 2018).

Te Kawa explains the Tūhoe approach this way: "We know that Te Urewera predates us and that we are her creation living with and amongst all of her kin. As her children, we are born with responsibility; we are not born with power and rights. The most difficult of virtues, yet most important to accomplish, is our sense of belonging, to know our place and contribution

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to creation. In reaffirming this natural order, the [Te Urewera] Board through Te Kawa is disrupting the notion of our false superiority over the natural world. In all decisiveness, we are returning to our place in Nature, as her child" (Te Urewera Board 2017).

GUARDIANSHIP IN TE UREWERA

Once ecosystems are recognized as legal persons with rights, the practical question arises of who can speak for Nature in human legal and policy forums. This issue is often termed *guardianship* in the RoN literature. In Western law, guardianship implies that decision-making authority is taken away from a person who is incapable of managing his or her own affairs and given to someone else. For example, courts commonly use the legal doctrine of in loco parentis (Latin for "in the place of a parent") to appoint guardians for children or incapacitated people who cannot defend themselves. There are cases where this legal doctrine of guardianship has been applied to Nature. In India, the High Court of Uttarakhand recognized the Ganga (or Ganges) River as a legal person and invoked in loco parentis to make a set of government officials responsible for acting on behalf of the river for its protection (see chapter 8).

Many RoN activists find this literal application of legal guardianship to Nature problematic, since it violates the fundamental Earth jurisprudence principles that Nature knows better than humans how its ecosystems should function and evolve, and that Nature is better understood as the parent in the human-Nature relationship. Certainly, the Tūhoe conceptualize guardianship differently from the traditional Western legal conception. While the Te Urewera Act does establish statutory guardians (the Te Urewera Board) who speak for Nature in human institutions, the Tūhoe approach to guardianship focuses more on creating a system designed to listen to what Te Urewera itself is "saying" by discerning patterns and changes in its processes and then using this information to manage human impacts. For the Tūhoe, guardianship is not about managing Nature like one would manage a child but instead about guarding the relationship between people and Nature.[10] The best that people can do is manage their behavior to try to maintain their proper role within the ecosystem community.

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The process of implementing *Te Kawa* requires recovering ancestral knowledge, customs, and practices in order to reconnect the Tūhoe iwi to the land and fulfill their responsibility as *kaitiaki* (guardians or stewards) of Te Urewera. One of the ways they are doing this is establishing bush crews led by respected Tūhoe elders who have always lived in the forest and have kept the traditional way of life. The first bush crew was created in late 2018 in Ruatoki, the main Tūhoe population center. It is led by Maynard Apiata, a universally respected elder who still lives in the traditional way and is thought to know the forest better than anyone.

In 2019 Uncle Maynard, as he is affectionately known, was training a group of about ten young Tūhoe men to live traditionally in the forest and to learn to know Te Urewera's features and rhythm intimately. Over time, the plan is for this bush crew to train bush crews in each of Te Urewera's valleys so that there will be Tūhoe crews living and working throughout the forest.

For Tūhoe leaders, including those on the Te Urewera Board, these bush crews are the real guardians of Te Urewera. By living in the forest, looking for patterns, and carefully observing what happens over time, the crews are (re)learning how to listen to "the voice of Te Urewera," which we interpret to mean that they understand how the ecosystem adapts and evolves naturally in response to changing conditions. [11] They then communicate what they observe to Te Uru Taumatua, the Tūhoe organization responsible for carrying out operations that manage people for the benefit of the land.

The Tūhoe view the bush crews as the real guardians of Te Urewera. As Tamati Kruger explains,

> [In 2018] we realized that we were starting in the wrong place. That guardianship is not in the board room, in those that were mandated. I think we were projecting from modern society, from Pākehā Western culture, that [the Te Urewera Board] are the guardians. Slowly we figured out that no, they are not. The guardians are [the bush crews]. These are the people who probably are not educated in the Western definition. They don't have diplomas and degrees. They probably suffered through the education system. They probably have some literacy issues. They don't like meetings. They don't like agendas. They don't like papers. But they love the land and they love living there, working there, sensing it and being part of it. Now *that's* a guardian.[12]

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In practice, the guardianship arrangement in Te Urewera involves a networked system of governance involving three types of actors. The Te Urewera Board speaks for Te Urewera from a legal and philosophical basis, establishing general principles for people management. The bush crews speak more directly for Te Urewera in the sense of living in the forest, observing its natural order and evolution, paying attention to signs the forest is giving them, and communicating what they observe to Te Uru Taumatua operations teams working in each of Te Urewera's four valleys. Te Uru Taumatua then compiles this information into a composite picture of the forest as a whole and uses it to make operational decisions for how the Tūhoe will manage their presence in the forest.

EARTH JURISPRUDENCE IN PRACTICE

While the Te Urewera Act continues to ensure that Te Urewera lands are available for public use and enjoyment, *Te Kawa*'s principle of managing people for the benefit of the land reverses the National Parks Act's focus on managing land "for the benefit, use, and enjoyment of the public" (New Zealand Parliamentary Counsel Office 1980, sec. 4). Consequently, the criteria used to make decisions in Te Urewera differs in subtle but important ways from the approach taken by the New Zealand DOC when Te Urewera was a national park. Before an action is taken, the Tūhoe ask whether the purpose is to benefit Te Urewera or people. Actions to benefit Te Urewera are generally taken. Actions to benefit people will only be taken if the impact on Te Urewera is limited and does not upset the balance of the ecosystem.[13]

There are many examples of how this people management system has impacted governance in the forest in large and small ways. Trails going through Te Urewera are designed to benefit Te Urewera (minimizing environmental impact) rather than being convenient for people. Under the DOC, trails were made to provide the shortest, most direct routes. Now trails may meander and be longer in order to ensure minimal environmental impact. Some trails and bridges that were washed out were not repaired because they were determined to not be in Te Urewera's interest. This logic also affects the siting of structures in Te Urewera: some existing structures were removed or not maintained because of their impact on Te

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Urewera, and the design and siting of new structures is determined based on the new logic of what's best for the forest.

One of the implications of having a governance system that manages people rather than Nature is that the Tūhoe recognize that they may need to adapt to changing conditions within the forest ecosystem over time. A good example is how they are planning for the results of climate change—which, they recognize, will inevitably alter conditions in the forest ecosystem. But rather than plan to insulate themselves from these changes (by trying to control Nature), they are trying to develop processes for adapting to these changes, adjusting human society to fit into the ecosystem as it evolves. For example, the Tūhoe are thinking about how they can build housing and other infrastructure that is mobile so that society can relocate to different parts of the forest as necessary given the demands of climate change.[14]

Dealing with the forest's possum population provides another example of changed governance under *Te Kawa*. The DOC considered possums to be the main "pest" in Te Urewera. Possums were introduced to New Zealand in 1858 to establish a fur trapping trade, but because they have no natural predators in Te Urewera (besides humans), their population skyrocketed, threatening native bird and plant species. The DOC approached this as a "pest control" problem and employed aerial spraying of the rodenticide sodium fluoroacetate, commonly called 1080. Although 1080 is extremely harmful to the environment and human health, the DOC sprayed it because it was the cheapest approach.

The Tūhoe view toward possums is more complicated. On one hand, humility toward Nature makes many Tūhoe uncomfortable with treating animals as "pests." As Kirsti Luke notes,

> Because I'm a human I take responsibility for causing all of this development and pushing all of these animals into a corner. Everybody now calls them pests. Because I took this land around here where ordinarily they could have lived in balance because there was enough land to go around. I took and ate up all of the land to put my houses on and my farms and now I've got the cheek to turn around and call that possum a pest. . . . We do not manage the land. So our business—our number one pest control intent is to make harder, stronger, responsible humans. (Quoted in Crimmel and Goeckeritz 2020)

On the other hand, there is a recognition that because possums have no other natural predators in Te Urewera, their rapid population growth

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could threaten the forest ecosystem if left unchecked. Possums, as well as rats and stoats, eat regenerating growth in the forest and the eggs of native bird species at a level that could lead to the birds' extinction. By killing birds that normally spread seeds that help the forest regenerate, possums have a system-wide impact.

Consequently, the Tūhoe do work to limit the possum population, but through trapping and hunting. While this is extremely labor intensive, cost is not an issue because hunting possum provides a sustainable livelihood for many Tūhoe families. The Tūhoe consume the meat and sell the fur to make blankets, hats, and other goods. Our interviews with possum hunters suggest that the hunting is not seen as a pest eradication exercise in the same way that the DOC conceptualized it. But it also is not an economic exercise that might incentivize Tūhoe to boost possum populations to maximize profits. Rather, Tūhoe hunters have expressed a duty to help maintain the possum population at a level that will not overwhelm the ecosystem and cause other important species to go extinct. They have also emphasized that they are part of the forest ecosystem and must live off the land, and that they themselves are the only predator of the possum. Our impression is that the Tūhoe play a natural role in the forest's food web so that the forest ecosystem can sustain itself, much like the role wolves play in Yellowstone Park when they hunt deer. Notably, the Tūhoe do so by minimizing their ecological impact.

Controlling possum populations through hunting shows how the Tūhoe are reviving traditional practices of living off the land sustainably, which allows them to conduct ecologically sustainable practices rejected by the DOC as too expensive. As Luke has noted, "DOC only employed, like, six people. We can bring five thousand, and they are not motivated by money, but by love of the land."[15]

To symbolize the Tūhoe's relationship with the land and their commitment to *Te Kawa* principles, they built New Zealand's first living building as their tribal headquarters.[16] To meet international living building standards, the Tūhoe had to meet ten stringent imperatives for ecological sustainability, including using natural materials found locally, net zero energy use, and net zero water use.[17] The building is meant to mirror Tūhoe values and "bring to life the idea that we must restore the spaces that we live in. We must live within our means" Tūhoe Iwi, n.d.-a.). The

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Tūhoe have applied the same techniques used in this building to minimize the impact of other structures throughout Te Urewera.

The Tūhoe's strategy for maintaining roads similarly illustrates minimizing human impact for the benefit of the land. Instead of paving roads with asphalt, which releases toxins into the air and soil, they developed a technology to cover dirt roads with a mixture of tree sap and a fiber by-product of paper manufacturing. When sprayed on roads, it packs and seals the dirt, producing a durable, pavement-like surface. The technology was successfully piloted in 2017, and by 2019 plans were underway to expand what they call "Nature's Road."

Parts of Te Urewera, particularly Lake Waikaremoana and its Great Walk, continue to be popular tourist destinations. Under *Te Kawa*, people continue to hike, fish, camp, photograph, hunt, and forage for natural medicines. But *Te Kawa* principles do require some changes in behavior compared to those of prior DOC management. For example, visitors are no longer permitted to use "tired boats" that leak oil and gas into the lake. Restrictions are placed on where people can camp and light fires, and campers are required to carry out their trash. Visitors are not allowed to chop down native trees without permission. In short, visitors are welcomed to continue traditional recreational activities, but must do so in a way that respects the land.

Certain commercial activities (e.g., hunting, fishing, logging, diversion of water for hydroelectric power, etc.) are still allowed under *Te Kawa*. But people who wish to engage in commercial activities must sign Friendship Agreements with Te Urewera (via its legal guardian, the Te Urewera Board). These Friendship Agreements replace the previous concessions regime applied by the DOC. While the agreements are similar to the previous concessions regime in many ways, *Te Kawa* states that they are "designed to achieve new and broader standards of integrity for [people's] impact uses on the living system of Te Urewera. A Te Urewera Friendship Agreement admits that opportunities are afforded only where we can demonstrate loyal affection to Te Urewera values and her need to continue her complex balancing act amongst her living system. The collaboration needed by holders of Friendship Agreements will enact and instill robust examples of the principles required of all interactions with Te Urewera. Their design will ensure the mauri of Te Urewera is not diminished through external pressures, considerations or expectations" (Te Urewera Board 2017).

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The reframing of concessions to Friendship Agreements is meant to transform people's worldview away from seeing Te Urewera as a stock of resources to be extracted and instead toward seeing it as a living ecosystem in which people are embedded and with which people have reciprocal relationships. The Friendship Agreement framing was a conscious strategy for establishing standards of behavior that were different from measures of extraction and contamination common to environmental impact assessments. This is a good example of how implementation of New Zealand's RoN laws are attempting to stimulate a paradigm change. Tūhoe leaders are quick to point out that true friends do not exploit, take advantage of, or harm one another. While you may take resources from a friend when needed, as a true friend you will return the favor. Friendship Agreements are meant to inspire people to understand how their activity fits into and affects the complex web of life in the forest ecosystem and to manage their activity in a way that preserves Te Urewera's right to exist, maintain its natural cycles, evolve naturally, and be restored when damaged.

CHAPTER SUMMARY

Te Urewera presents a very different conception of the practice of RoN from that seen in Ecuador or Bolivia. In Ecuador (the Nature's rights model), RoN is enforced through the courts via lawsuits seeking restoration after a violation has occurred or is imminent. By contrast, the Te Urewera Act (the legal personhood model) provides a more proactive approach. The ecosystem's right to exist, to maintain the functioning of its cycles, and to be restored are not formally recognized in law but are protected in practice through a governance system that incorporates Earth jurisprudence principles.

In many ways, Te Urewera is a relatively easy case for implementing Earth jurisprudence. Because the forest was conserved as a national park, the ecosystem is largely intact, with minimal human development. The remaining Tūhoe population living in the area is small enough that it will be able to live well within the forest's carrying capacity for years to come. In this way it is different from New Zealand's 2017 Te Awa Tupua Act, which follows roughly the same model for structuring RoN. Implementation there will prove more challenging as it addresses a watershed with extensive economic development and multiple and diverse stakeholders.

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Nevertheless, the Te Urewera case shows how legal provisions extending legal personhood to Nature can facilitate a transition to Earth jurisprudence when used as a legal tool allowing Indigenous peoples to recover ancestral knowledge and customs consistent with Earth jurisprudence. In these circumstances, RoN can be compatible with such Indigenous rights as self-determination and preservation of culture. The Te Urewera case also illustrates how Indigenous customary law and practices are important not just because of cultural tradition but also because they evolved over centuries to effectively maintain human communities' proper role in the interconnected web of life that constitutes the local ecosystems on which they depend for their well-being. It is, of course, true that people also benefit due to their dependence on the land. But people can only realize these benefits to the extent that they manage their own behavior in a way that protects the entire ecosystem by recognizing the intrinsic value of each member of the biotic community and ensuring its right to exist and responsibility to contribute its part to the system.

Tūhoe leaders see the legal personhood provision in the Te Urewera Act as important primarily because it provides a legal tool for pausing the preexisting Western legal, economic, and governance framework, thereby creating a space for the Tūhoe to replace this with an Earth-centered governance framework consistent with their customary practices and values. This is why Tūhoe leaders (and Crown negotiators) do not see the legal personhood provision as the most important element of the act. More important are the act's provisions that codify the Tūhoe understanding of the forest and humans' relationship to it, and which have empowered the Tūhoe to retake their traditional place as *kaitiaki*, or guardians, of Te Urewera.

The Tūhoe could have enacted their Earth-centered governance framework without the legal personhood provision if they had the authority to do so, but they did not have that authority. They needed the legal personhood provision to remove Te Urewera's status as property owned by the Crown and subject to the Crown's regulatory framework. This was the real power of the RoN legal provision.

But what about Western societies, where transitions to Earth jurisprudence systems are not directly a process of recovering ancestral knowledge, but rather guiding a society-wide paradigm change? In these societies, the

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switch to Earth jurisprudence involves transforming legal, economic, and governance systems in a fundamentally new way that requires changing people's understanding of humans' relationship to the rest of the natural world. As we might expect, RoN legal provisions operate very differently in these contexts. In the next two chapters, we analyze how RoN jurisprudence is evolving as laws are applied in policy arenas without a strong Indigenous presence. Chapter 7 examines the evolution of the Nature's rights model in the United States, and chapter 8 addresses the evolution of the legal personhood model in Colombia and India.

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7

EXPERIMENTATION AND ADAPTATION AT THE LOCAL LEVEL IN THE UNITED STATES

The United States is a center of global rights of Nature (RoN) activity; in January 2021 there were at least eighty-seven instances in which RoN was recognized in local and tribal law. This chapter analyzes the politics of RoN in the United States, which differs from the politics surrounding national-level laws like those in Ecuador, Bolivia, and New Zealand (see chapters 4–6) in important ways. The structure of the US federal system, combined with the politicization of environmental issues and partisan gridlock in the US Congress, has spurred RoN advocates to instead focus on persuading local communities and municipal officials to use RoN to promote more ecologically sustainable development (see chapter 3). The US cases highlight the challenges of promoting RoN through local laws, particularly within a federal structure, but also new pathways for institutionalizing RoN through municipal regulatory policy. These cases also illustrate the application of RoN within a Western legal context not heavily influenced by Indigenous cosmovision. The US tribal nation cases demonstrate how RoN in tribal law is a way to translate Indigenous understandings of humans' relationship with and responsibility to Nature into a Western legal framework, both to help them combat threats to their ecosystems and to educate non-Indigenous audiences about their paradigm.

Because of the decentralized approach to implementing RoN in the United States, we see many different pathways being pursed in varied

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contexts, producing distinct institutional and legal frameworks for implementing RoN. This chapter examines three: (1) local ordinances meant to protect RoN from imminent harm through the courts; (2) the insertion of RoN into the municipal-level regulatory planning process regarding sustainability; and (3) US tribal nations' insertion of RoN into tribal law. Each of these pathways illustrates different kinds of legal provisions for implementing RoN, as well as its evolution in response to local contexts, contestation, learning from other cases, and experimentation.

This experimentation is producing models that blend elements of the Nature's rights and legal personhood models presented in previous chapters. For example, Toledo, Ohio's Lake Erie Bill of Rights (City of Toledo 2019) applies the rights and guardianship mechanism associated with the Nature's rights model to a specific ecosystem. Santa Monica, California's Sustainable City Plan applies them proactively through decision-making institutions as is done in the legal personhood model. These and other adaptations partly stem from the work of transnational activist networks that facilitate the sharing of lessons and knowledge from activists in one part of the world to another.

The US cases also demonstrate how RoN is transcending traditional political divides, traveling from small, conservative rural communities in Pennsylvania to more urban, progressive communities in California and to tribal communities in the Midwest.[1] In each case, communities are responding to an overarching call to transform a legal system that fails to protect their ecosystems, ways of life, and health for present and future generations.

LOCAL STRATEGIES FOR PROTECTING RIGHTS OF NATURE THROUGH THE COURTS

Chapter 3 describes how the first RoN legal provision emerged in Pennsylvania through the work of environmental lawyers from the Community Environmental Legal Defense Fund (CELDF) who advocated RoN as a legal tool for helping local communities fight back against the environmental and health problems created by extractive industries. Notably, they framed RoN advocacy as an expression of community rights and

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democratic principles of local self-government. Supported by CELDF, a number of Pennsylvania communities passed ballot initiatives creating local ordinances that established community rights. In these initiatives *community* is defined as including both human and natural communities (i.e., all members of ecosystems). In order to protect community rights and RoN, these ordinances also limited corporate rights and banned corporate practices harming their communities. This section examines the politics surrounding such ordinances in Grant and Highland Townships to illustrate the challenges of using them to protect RoN through the courts, as well as adaptation and experimentation with home rule charters as a tool to overcome these challenges.

Grant and Highland Townships in Pennsylvania are examples of the growing number of US communities adopting RoN ordinances to prevent environmental damage caused by hydraulic fracturing, or fracking. Concerned that fracking would contaminate its water supply, the Highland Township Municipal Authority spearheaded the drafting of a community bill of rights ordinance in 2012. A local group, Citizens Advocating a Clean Healthy Environment (CACHE) and CELDF assisted in the drafting (Nicholson 2016). Passed in 2013, the Highland Township Community Rights and Protection from Injection Wells Ordinance expanded community rights, gave ecosystems in the county the right to exist and flourish, and banned all activities of natural gas and fossil fuel extraction and wastewater injection (Highland Township 2013).

Similar action was taken in Grant Township—which, like Highland Township, relies entirely on private wells and springs for its drinking water. After Pennsylvania General Energy (PGE) filed for a permit to inject wastewater into one of its unused wells in the township, residents began to worry the injected wastewater would leak into their drinking water sources (Pryts 2016). While PGE has seven other wells, this was the first wastewater injection well for the township. In response to what the community perceived as a threat to its natural environment and their families' health, on June 3, 2014, Grant Township adopted its Community Bill of Rights Ordinance (created with CELDF support) that recognized RoN and prohibited depositing oil and gas waste materials in the township (Grant Township 2014).

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GRANT TOWNSHIP, PENNSYLVANIA

On August 14, 2014, PGE filed a lawsuit challenging the constitutionality, validity, and enforceability of Grant Township's Community Bill of Rights Ordinance, *Pennsylvania General Energy Company, LLC, v. Grant Township* (US District Court for the Western District of Pennsylvania 2015a). PGE claimed preemption, arguing that the ordinance conflicted with several state statutes (the Oil and Gas Act, the Limited Liability Companies Law, and the Sunshine Act) that took precedence over the township ordinance due to the Pennsylvania Second Class Township Code, which requires townships to align their laws with the Constitution of the Commonwealth of Pennsylvania and follow the state code (Commonwealth of Pennsylvania 1933). PGE also argued that the township illegally discriminated against it by singling the utility company out as a corporation, which PGE noted has personhood status under the US Constitution.[2] PGE's lawsuit sought declaratory judgments and injunctive relief from Grant Township.

Grant Township filed a counterclaim alleging that by challenging the ordinance PGE was violating the inalienable rights of the township's people. The township submitted a brief in opposition to summary judgment, arguing that local communities have a right to self-government and have "legitimate reasons to be concerned about corporate activities causing environmental contamination and public health hazards, coupled with inadequate federal and state oversight" (Grant Township 2016a). Moreover, the township's brief expanded the concept of community rights to also include "environmental rights," including a "constitutional right to clean air, water, and a safe environment" (Grant Township 2016a).

In response to PGE legal actions and the threat of wastewater injection into the well water and natural springs on which they depend, a group of concerned citizens formed the East Run Hellbenders Society, intervening in the PGE lawsuit and issuing a brief on behalf of the Little Mahoning Watershed on which local residents depend. In their brief, the Hellbenders claimed to legally represent the Little Mahoning Watershed, citing as justification legal systems around the world that recognize "rights of ecosystems," including Ecuador's 2008 constitution. The brief noted that "Grant Township law recognizes the rights of ecosystems" and cited the case of *Cetacean Community v. Bush* (US Ninth Circuit Court of Appeals 2004) to argue that natural communities like the Little Mahoning Watershed can

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have standing in court when written into the law (US District Court of Western District of Pennsylvania 2014).[3]

Judge Susan Paradise Baxter of the Western District Court of Pennsylvania found that the ordinance did overstep the legislative boundaries of a second-class township like Grant. Further, Judge Baxter argued that the Hellbenders and the watershed had no standing in courts because the municipality represented their interests and CELDF was representing all parties. This meant that the ecosystem and the community members were not underrepresented in the suit.

Undeterred, residents experimented with a new legal provision to codify RoN. On November 3, 2015, Grant Township adopted a home rule charter. Legal tools applicable in forty-three US states, including Pennsylvania, home rule charters are local municipal constitutions that override the second-class status of a municipality to a US state (Russell and Bostrom 2016). Inspired by the court's rejection of its RoN ordinance, Grant Township passed the home rule charter to circumvent the preemptive nature of state constitutions over municipalities.

When adopting the charter, Grant Township repealed its Bill of Rights Ordinance so that it could not be held liable for any damages to PGE resulting from the court decision. The charter created a new, stronger legal pathway for invoking RoN to prohibit PGE from wastewater injection within the township; it declares that its residents, and "all natural communities and ecosystems within the township, possess the right to clean air, water, and soil." Section 106 states that "natural communities and ecosystems within Grant Township, including, but not limited to, rivers, streams, and aquifers, possess the right to exist, flourish, and naturally evolve," and section 105 explicitly states Nature's right to be free from damaging activities, including "waste from oil and gas extraction" (Grant Township 2016b, secs. 104–106).

HIGHLAND TOWNSHIP, PENNSYLVANIA

Like Grant Township, Highland is a small, second-class township that passed an ordinance (Highland Township 2013). In addition to community rights, the ordinance gave ecosystems the right to exist and flourish in the township and banned all activities of natural gas and fossil fuel extraction and

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wastewater injection. The 2013 Highland Township Community Rights and Protection from Injection Wells Ordinance was passed in response to plans by the gas drilling company Seneca Resources to place a wastewater injection well within a half mile of the township's water source, known as the Crystal Spring Ecosystem. On February 18, 2015, Seneca Resources filed a lawsuit challenging the ordinance's legal standing, *Seneca Resources v. Highland Township* (US District Court for the Western District of Pennsylvania 2015b). CACHE filed to intervene in the suit on behalf of the Crystal Spring Ecosystem. In March 2016, Judge Baxter denied the request, reasoning that the township adequately represented the ecosystem (US District Court for the Western District of Pennsylvania 2016).

This process mimicked that of Grant Township, and Highland Township's local supervisors knew the outcome of PGE's challenges to Grant's ordinance. Reportedly fearing costs to the county from a lawsuit and the possibility that they might be held personally liable, on August 11, 2016, Highland's supervisors filed a "consent decree" with Seneca, removing local obstacles to the dumping of Seneca's waste. The next day a federal judge accepted the settlement and refused to allow township residents to intervene in the proceedings.

Community residents were furious and committed themselves to further action. As Sue Swanson, a resident who also serves on the Highland Township Municipal Authority, lamented, "We've been working tirelessly to protect our rights and our water for three years, only to find that we've been shut out at every level of government. What a farce" (quoted in Nicholson 2016). Marsha Buhl, president of CACHE, stated, "When did it become 'illegal' to protect our water and our rights? And when did it become 'legal' for a polluting corporation, with a history of permit violations, to dump toxic waste into our Township? It's a sad day to be a resident in Highland Township. We are fighting on. Stay tuned for Home Rule" (quoted in Nicholson 2016).

Aware of how Grant Township adapted its RoN law through the adoption of a home rule charter, Highland's residents pressed for similar action. Concerned, the Highland Township Board of Supervisors unsuccessfully tried to remove the home rule charter ballot from the November 2016 election. But the ballot passed, and Seneca Resources immediately filed a complaint against it, claiming that the charter overstepped its state

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constitutional boundaries by granting standing to ecosystems. It further challenged the township's right to remove the personhood status of corporations and further argued that the Pennsylvania Oil and Gas Act and the Safe Drinking Water Act both have provisions for the disposal of brine in fracking wastewater.

On January 17, 2017, CACHE and the Crystal Spring Ecosystem filed for intervenor status in the complaint against Highland Township. In this motion, CACHE argued that residents have a unique right to local, community self-government and a right to enforce the rights of the Crystal Spring Ecosystem, per sections 105 and 407 of the home rule charter, which include the rights "to flourish and exist." The Highland Township Board of Supervisors did not support the ordinance and was unsupportive of the home rule charter. Thus, the intervention brief asserted that, unlike Grant Township, the Highland Township Board of Supervisors could not adequately represent CACHE and the ecosystem (Citizens Advocating a Clean Health Environment 2017). This is important because Judge Baxter denied the 2015 motion that said the municipal authority represented the citizens and ecosystem of Highland Township. Since the 2017 motion does not include the municipal authority, it presents a new question to the courts regarding whether CACHE and the ecosystem are adequately represented in the original complaint.

Unlike the Grant Township case, Highland Township's lawsuit addresses the home rule charter status, not an ordinance. Additionally, as the municipality was not asking for intervenor status, the question of ecosystem standing in the court was addressed, whereas it had not been addressed directly in the previous 2016 suit or in Grant Township. Thus, the Highland Township lawsuit had the potential to construct new RoN legal frameworks, including home rule charters and recognition of ecosystems' legal standing in US courts. This did not come to fruition, however.

PERSEVERANCE AGAINST PREEMPTION

To date, the RoN provisions in Grant and Highland Townships' home rule charters have been challenged in court not only by PGE and Seneca Resources but also by the Pennsylvania Department of Environmental Protection (DEP). Additionally, the US District Court deemed Highland

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Township's waste disposal sections in the charter "invalid, unenforceable, and unconstitutional" (US District Court for the Western District of Pennsylvania 2016). In the case of Highland Township, the Board of Supervisors settled the lawsuit with the DEP and conceded that the clause on the ban of disposal wells was unconstitutional. While CACHE residents did not agree with town board, they were left with little choice for moving forward legally. After this settlement the DEP issued a disposal well permit for Highland Township, the township's second, and only a half mile away from the first one (Legere 2017).

Grant Township, however, continues to contest community rights and RoN with the distinct advantage of having a board of supervisors that supports the ban on wastewater injection wells. Yet the road has not been smooth. In January 2018, CELDF attorneys who were working with Grant Township residents were fined $52,000 in the US District Court as part of a sanctions motion filed by PGE to cover legal fees for "frivolous, unfounded, and harassing pleadings" in *Pennsylvania General Energy Company, LLC, v. Grant Township*. Grant Township was fined over $102,000. Judge Baxter found that CELDF had a fifteen-year history of "setting aside historically well-settled legal precepts," clearly rejecting community rights and RoN arguments (US District Court for the Western District of Pennsylvania 2018). The court's decision and CELDF's and Grant Township's defiant response point clearly to norm contestation over RoN and one state's struggle to guarantee corporate rights in the face of citizen demands for community rights, including the right to clean water. By November 2019, Grant and CELDF had settled out of court for fines of $75,000, none of which will be paid by the small township, but by CELDF (Community Environmental Legal Defense Fund 2019).

Yet Grant Township maintains strong community support for its home rule charter, and has received some legal victories as well. On October 4, 2019, supporters of the township packed a courtroom in Pittsburgh to hear arguments for the continuance of the DEP lawsuit and to "show the state that people are paying attention."[4] In early 2020 the Commonwealth Court of Pennsylvania denied the DEP's request for preemptory judgment and granted the township authority to pursue oral arguments against wastewater injection wells as an exercise of its constitutional

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rights under the Environmental Rights Amendment of Pennsylvania's constitution (Commonwealth of Pennsylvania 1971, art. 1, sec. 27; Commonwealth of Pennsylvania 2020). Additionally, the DEP rescinded the permit it issued PGE in 2017 for the Yanity wastewater injection well, noting that "the home rule charter remains in effect" (Legere 2020). In response, PGE is appealing the DEP decision to rescind the wastewater injection well permit and it filed suit against Grant Township in December 2020 seeking to overturn the township's ban on wastewater injection wells (Hess 2020).

Grant Township has the opportunity to persuade the Commonwealth Court that it can provide a legal framework for challenging state statutes under the Environmental Rights Amendment. Grant Township is carrying the development of RoN to the next level in the United States, and this case will create important precedent for other communities in Pennsylvania, Ohio, and elsewhere who are opposing fracking and wastewater injection wells.

Highland and Grant Townships' charters provide a model for other communities in home rule charter states and/or those with state oil and gas laws that may preempt municipal laws. Yet these cases also highlight the significant limitations of local laws meant to protect RoN through the courts, standing in stark contrast to Ecuador's constitutional authority, which facilitated the strengthening of RoN jurisprudence there. In addition to relatively weak legal standing, local ordinances must also overcome the allure of corporate profits and local jobs, as well as the historical institutions in place to support extractive industries, which similarly remain in Ecuador. Still, community members—from Grant Township to the Cofán and Waorani peoples of Ecuador—are continuing their struggle by adapting their legal arguments, and they are making small gains in the process. We believe this shows that RoN and Earth jurisprudence norms are becoming more salient, and a social movement is rising to challenge the dominant norm of development through unlimited extractivism. While preemption laws pose real hurdles, there is some initial evidence that local activists may have more success by proactively incorporating RoN into municipal regulatory policy.

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RIGHTS OF NATURE THROUGH SUSTAINABILITY POLICY IN SANTA MONICA, CALIFORNIA

Many US RoN laws, like those in Pennsylvania, are reactive in that they were created to respond to specific, dire, existing environmental threats. By contrast, Santa Monica, California's sustainability rights ordinance and related sustainability plan illustrate the proactive creation of an ordinance to prevent future harms and promote sustainable development (City of Santa Monica 2013; City of Santa Monica 2014). They show how RoN can be particularly powerful when incorporated into the decision-making process regarding sustainability policy and how RoN norms continuously travel across global and local networks to influence local laws within US municipalities. Principle 6 of Santa Monica's Sustainability Plan "recognizes its linkages with the regional, national, and global community," emphasizing that "local environmental, economic, and social issues cannot be separated from their broader context" (City of Santa Monica 2014).

Following the Global Alliance for the Rights of Nature's (GARN's) first meeting in Ecuador in 2010, Pittsburgh became the first major US city to pass (in November of that same year) an ordinance recognizing RoN and banning shale gas drilling and fracking. Energized by the momentum, GARN cofounders Shannon Biggs (then of Global Exchange) and Linda Sheehan (then the executive director of the Earth Law Center) began working with Santa Monica city officials to craft a sustainability rights ordinance. They enlisted attorneys from CELDF to assist in the wording of the ordinance and to sponsor a three-day Democracy School workshop on community rights and RoN to strengthen local democratic governance (Biggs 2013). Three years later, in April 2013, the ordinance passed.

Unlike the Pennsylvania ordinances discussed herein, Santa Monica's RoN ordinance did not respond to an immediate environmental threat but rather grew out of a local movement that had initiated a sustainable city plan in 1994 and had revised it over the years. Given the window of opportunity created by the city plan, and support within society, Shannon Biggs, Mark Gold (then chair of the Santa Monica Task Force on the Environment), and Linda Sheehan drafted various versions of an ordinance and presented them to community members and the Santa

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Monica City Council in 2012. Throughout the year, multiple drafts were edited to accommodate various community concerns, showing how contestation and adaptation are part of the policy process even when there is support for RoN.[5] Ultimately, the version that unanimously passed in April 2013 was drafted in coordination with a multitude of stakeholders, including a significant role by city attorney Marsha Jones Moutrie.[6]

Santa Monica's ordinance acknowledges the influence of RoN and Earth jurisprudence norms diffusing through transnational networks. It highlights this "new paradigm that recognizes the rights of the natural world to exist, thrive and evolve" (City of Santa Monica 2013). It cites as justification precedents like the 2008 Constitution of the Republic of Ecuador and the December 2010 City of Pittsburgh Community Bill of Rights (which bans natural gas drilling within the city limits) and "elevates the rights of people, the community and nature over corporate rights" (City of Santa Monica 2013). Similarly, it notes other legislation emerging around the United States (e.g., in Maine, New Mexico, New York, Ohio, Pennsylvania, and Virginia) that recognizes the rights of natural communities and subordinates corporate rights to local sustainability efforts.

After delineating a number of human environmental rights, section 4.75.040 of the ordinance states, "Natural communities and ecosystems possess fundamental and inalienable rights to exist and flourish in the City of Santa Monica. To effectuate those rights on behalf of the environment, residents of the City may bring actions to protect these natural communities and ecosystems, defined as: groundwater aquifers, atmospheric systems, marine waters, and native species within the boundaries of the City" (City of Santa Monica 2013).

Recognizing that RoN challenges vested corporate interests, and taking into account the inherent weakness of local legal provisions, the ordinance roots its RoN declaration within democratic principles of community self-determination, stating, "All residents of Santa Monica possess the right to self-governance and to a municipal government which recognizes that all power is inherent in the people, that all free governments are founded on the people's authority and consent, and that corporate entities, and their directors and managers, do not enjoy special privileges or powers under the law that subordinate the community's rights to their private interests" (City of Santa Monica 2013).

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In chapter 1 we discussed how RoN is framed differently as it is applied in particular contexts, producing distinct institutional expressions. In Santa Monica, RoN is framed as a tool for implementing a more ecologically sustainable municipal development policy. For this reason it differs from the other US ordinances in this book in several key ways that blend elements of the Nature's rights model (e.g., recognizing unique rights for all ecosystems) with the legal personhood model (e.g., addressing RoN proactively by embedding it within an ecosystem management decision-making process).

Santa Monica's ordinance takes a proactive approach, providing a model for sustainable development to work proactively toward, rather than reacting to a specific threat such as sewage sludge or fracking. More important, because the ordinance incorporates RoN into municipal-level sustainability policy, it creates a process for defining it through specific and measurable indicators regarding ecosystem sustainability that are regularly reported and verified. Noting inadequacies in existing national and state environmental laws, the Sustainable City Plan and its oversight bodies created scientifically based indicators to measure the implementation of RoN based on their goal areas of resource conservation, environmental and public health, economic development, housing, human dignity, open space and land use, community education and civic participation, arts and culture, and transportation. Within each goal area, measurable indicators are identified and reported on every twenty-four months, as mandated in the sustainability ordinance, with public hearings "to ensure compliance" (City of Santa Monica 2013). This process is one of the first experiments with creating standards for measuring the protection (and violation) of RoN within regulatory policy, and provides one example of what implementation can look like in a Western legal context without Indigenous influence.

Santa Monica's RoN leaders report that codifying measurable indicators has been important for identifying specific rights and whether they are being protected. When visiting the Santa Monica Sustainable City Plan website, one can view dashboards of indicators to gauge whether or not the city is on track. The city employs two types of indicators: (1) system-level indicators to measure the condition of a goal area (e.g., environmental and public health) and (2) program-level indicators to measure performance of

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a program or actions taken by the city or community stakeholders (City of Santa Monica, n.d.). For example, because of cited inadequacies of the Clean Air and Clean Water Acts, the resource conservation goal includes indicators for water use, with a 2020 target of 123 gallons per capita while limiting increased use to one hundred local sources; 72 percent of the water used is sourced locally (as of 2019) and that figure falls short of the 100 percent goal. Under the environmental and public health goals, marine debris is an indicator, and the 2020 target is zero trash from plastics, packaging, cigarettes, and other forms of refuse. The health of Santa Monica Bay also needs improvement, according to the 2020 targets; in 2019 there were 170 warnings or beach closures due to poor water quality from bacterial contamination (one example of municipal action taken in response to violations of RoN).[7]

The city's Sustainable Groundwater Management Plan, created to implement the Sustainability Rights Ordinance, provides another example of how RoN is institutionalized through regulatory policy. It states, "This groundwater ordinance is adopted to effectuate the Sustainability Rights Ordinance, the SGMA [the Sustainable Groundwater Management Act], and to protect the health, safety, and general welfare of the residents of the City and its natural communities and ecosystems by ensuring groundwater extracted within the City and water wells located within the City will not cause or contribute to the overdraft of the City's underlying aquifers or to their pollution or contamination, or lead to subsidence of land within the City" (City of Santa Monica 2019). This subsequent application of RoN not only illustrates the strengthening of Earth jurisprudence norms regarding humans' relationship with Nature but also RoN's impact on sustainable development policy regarding groundwater management.

While the court cases discussed throughout this book outline the damages inflicted on the natural world and communities by extractive industries, the Santa Monica case highlights a pathway toward curbing such atrocities before they reach irreparable levels. The sustainability ordinance cites Santa Monica's commitment to "restoring, protecting, and preserving the natural environment" and includes specifically "air, water, soil, climate, among other living things" (City of Santa Monica 2013, sec. 4.75.030). The dashboards on its website illustrate how indicators of RoN violations might be measured in a Western legal context, and also provide a transparent

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framework for community members to measure their rights. This innovative adaptation provides an important tool for protecting RoN in a proactive manner and mandating the responsibility for protecting Nature. While Santa Monica is similar to Ecuador in its conception of rights-bearing Nature and the rights recognized, it differs from Ecuador in its proactive approach to implementation of RoN through data-driven regulatory policy supported by standards. Additionally, while Ecuador and New Zealand illustrate the use of RoN to pursue an approach to sustainable development rooted in Indigenous cosmologies, Santa Monica demonstrates a Western application of RoN to achieve sustainable development.

Notably, Santa Monica has not experienced the legal challenges that have plagued many other US RoN ordinances, particularly early cases in Pennsylvania. That may be because of its proactive approach of embedding RoN within decision-making policy rather than challenging existing behaviors through the courts.

RIGHTS OF NATURE IN US TRIBAL NATIONS

While most of the RoN laws in the United States are emerging in non-Indigenous communities, it is important to note that a growing number of US tribal nations are recognizing RoN in tribal law.[8] Here we discuss four examples to highlight additional legal pathways through which RoN is being codified in the United States and to show how the legal provisions chosen evolve in response to local context, adaptation, and experimentation. US tribal communities have employed unique local tools given their status as sovereign nations within the US federal structure. They have employed aspects of legal personhood provisions from the cases in New Zealand (see chapter 6) and Colombia (see chapter 8). These efforts have been supported, in part, by a global network of RoN lawyers and activists from CELDF, the Earth Law Center, and Movement Rights, three RoN organizations that have been represented on the board of GARN and who participate in the United Nations (UN) Harmony with Nature Programme (detailed in chapter 2).

Federally recognized tribes and Alaska Native villages are organized under the oldest agency in the US Department of the Interior, the Bureau of Indian Affairs, which administers services to 573 tribes, fifty-five million

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surface acres (and fifty-seven million subsurface acres), and 1.9 million American Indian and Alaska Natives (Bureau of Indian Affairs, n.d.). Given the US's federal structure and the sovereign status of Indigenous nations, each tribal nation (recognized by the US government) has its own constitution and governance structure. For that reason, tribal nations in the United States have unique opportunities and challenges when implementing RoN.

Because of their sovereign status in the country, tribal nations have the right to self-determination, giving them some advantage over communities like Grant and Highland Townships in Pennsylvania. The US government also has a responsibility to uphold its treaties with the nations and to protect tribal rights, assets, lands, and resources. Differences arise, however, when mineral leasing agreements conflict with tribal sovereign rights. While the Indian Mineral Leasing Act of 1938 strengthens tribal nation self-determination over mineral leases, the Bureau of Land Management and the Bureau of Indian Affairs also supervise and approve many oil and gas leases in tribal lands. This complex structure, along with the federal government's authority to approve lease agreements and approve tribal nation constitutions and constitutional amendments, pose obstacles to tribal nations' efforts to strengthen Earth jurisprudence norms and Indigenous cosmologies of harmony with Nature within the strictures of the Western legal system. Nevertheless, we examine several attempts to do just that in the sections that follow. In this way, the case studies show how tribal nations are contributing to the evolution of RoN jurisprudence by using RoN to translate Indigenous understandings of humans' relationship to Nature into Western law.

THE HO-CHUNK NATION

In 2018, the Ho-Chunk Nation of Wisconsin became the first Native American nation in the United States to amend its tribal constitution to recognize RoN. This effort was led by Bill Greendeer, a Ho-Chunk member who studied law to be able to translate Ho-Chunk values and cosmology into Western law in order to protect his tribal lands from tar sand oil developments and the Enbridge pipeline that is planned to enter Ho-Chunk territory from Western Canada through Lake Superior and down through Wisconsin to

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Illinois. Greendeer had a long history of allying with Viterbo University professor Julie de la Terre, neighboring tribes in Minnesota, and the environmental group Honor the Earth (led by Winona LaDuke) to protest multiple oil pipelines. The tribal protestors call themselves "water protectors" and employ slogans like "Water Is Sacred" (Kaeding 2018). The Ho-Chunk Nation's constitutional recognition of RoN marks a new legal strategy in its long battle to protect its homeland. At its root, the strategy is to use RoN to codify Ho-Chunk values and cosmology into Western law in order to force non-Indigenous actors to recognize these values—and, ideally, to facilitate a paradigm change.

Bill Greendeer relayed his story at the Rights of Nature Symposium at Tulane Law School in New Orleans in October 2017. He told conference members that far from being a new concept, RoN "has been around for thousands of years. For Ho-Chunk, rights of nature has always been around." The Ho-Chunk believe that people's connection with Nature emanates from their heart and is innate, causing us to all be "in this together" (Greendeer 2017). The tar sands mines that are in his tribe's territory were leveling the forests, disturbing the animals, and contaminating the waters. Greendeer explained that for Ho-Chunk people "the tar sands, the water, the forests are sacred, like altars" (Greendeer 2017). Mining was tearing apart what his tribe held sacred.

Around 2014, Greendeer began studying law, attending lectures at the University of Wisconsin and CELDF workshops, supplementing the education he received by protesting. Explaining his motivation, he noted, "I want to know about laws and use white man's system to be able to protect nature. It means something to learn. I don't know about this, but I know about nature and sacred. I talk to animals and to plants; to protect sacred medicine plants, I dissect and learn; learn about law and the constitution. That's where I really thought that was something we could really use. The resolution for the constitution for rights of nature just verbiage, laws is just verbiage" (Greendeer 2017).

Greendeer is expressing a sentiment shared by Kirsti Luke of New Zealand, a Māori leader and negotiator for the rights of the forest Te Urewera (see chapter 6): that even though the notion of rights is a Western legal construct foreign to many Indigenous peoples, RoN laws can constitute Western legal tools for protecting and strengthening peoples' deep spiritual

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connection to their land and instill a responsibility to protect it. The formal RoN laws that are crafted are mere words that reflect much deeper understandings, meanings, and responsibilities. In other words, RoN legal provisions are merely a tool for transforming human systems to be consistent with Earth jurisprudence.

For this purpose, in 2015, Bill Greendeer and Julie de la Terre presented a RoN amendment to the Ho-Chunk Nation through its General Counsel. It passed in 2016, but was rescinded and rewritten by Greendeer in 2017 to fix a procedural requirement needed to amend the constitution. The vote to continue the process passed by over one thousand votes. In December 2019, the Ho-Chunk were preparing to send ballots to all tribal members for a second vote, as required for constitutional amendments. But in order for a new constitutional amendment to pass, the US secretary of the interior must approve it, a factor that often dissuades tribal nations from pursuing constitutional changes. At the time of this writing, the constitutional amendment was awaiting approval by the Bureau of Indian Affairs—a process that will provide lessons for other tribal communities considering RoN amendments in tribal constitutions (Greendeer 2017).

THE PONCA NATION

RoN networks fostered new laws in the Ponca Nation as well. Around 2015, Bill Greendeer traveled to Oklahoma to meet with the Ponca, a tribal community of about four thousand members headquartered in White Eagle, Oklahoma, to discuss RoN. During the same time period, Casey Camp-Horinek, Ponca tribal leader and member of the Ponca Business Committee (the seven-member, elected, governing body), traveled to Hawaii for a conference on women and RoN with Osprey Orielle Lake, director of the Women's Earth and Climate Action Network, as well as Shannon Biggs and Penny Opal Plant of Movement Rights, a nongovernmental organization dedicated to RoN advocacy (Greendeer 2017). These network connections planted the seed of RoN as a tool to express the Ponca Nation's deeply held belief system within a Western legal framework.

Camp-Horinek admits that when presented with the idea of RoN, she did not like it. "It didn't feel right," she explains; "I thought that no law should be created around Nature. Nature is not law. It was like building

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cages to put ourselves in this. Over time, I realized that colonists need to understand [our way of life and cosmology] and that was to create a right of nature law in the Ponca Nation." Creating RoN laws, she notes, is "reacting and becoming responsible to our mothers, grandmothers" (Camp-Horinek 2018). She and the Ponca viewed RoN as a codification of their responsibilities to previous and future generations.

Camp-Horinek's distrust of the US legal system is echoed by other Indigenous leaders due to their centuries-long experience of US law being used as a tool of oppression. The infusion of both RoN legal provisions and tribal norms and beliefs into a Ponca Nation statutory law is illustrative of the mutual learning between Western and non-Western systems, as well as the contributions of Indigenous wisdom and epistemology in Western legal structures. Such learning was fostered by network connections with RoN activists in Movement Rights and other Indigenous leaders like Bill Greendeer and those in Ecuador and New Zealand. When discussing Indigenous peoples' efforts to incorporate their wisdom regarding humans' relationship to Nature into Western law, Camp-Horinek (2018) notes that "the eagle and the condor are coming together. Red nations from the north to the south will rise and teach how to live in harmony with all that is."

Camp-Horinek explains that RoN is a form of "reviving sacred natural sites. We didn't choose the sites; they chose us" (2018). The Ponca sacred sites are threatened by a Philips 66 refinery and the Keystone pipeline that is scheduled to traverse their territory. Camp-Horinek claims that oil wells in the territory, and more recently hydraulic fracturing and injection well sites, have caused between six hundred and eight hundred cancer and autoimmune diseases, over ten thousand earthquakes, and numerous methane leaks. Given these threats to her community, Camp-Horinek held community meetings and, in January 2019, the Resolution Recognizing the Immutable Ponca Tribal Rights of Nature was passed by the Ponca Business Council. This is now a statute, and tribal members are considering how and when to enforce it to protect themselves from oil pipelines and further fracking and wastewater injection wells.

Unlike the Ho-Chunk, the Ponca Nation elected not to work at the constitutional level in order to move quickly. Camp-Horinek explains

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that the resolution and statute were more feasible tools for their nation, since a constitutional amendment would have taken too long and would need to be approved by the Bureau of Indian Affairs. By contrast, the resolution gives the Ponca Tribal Court the power to enforce penalties for crimes against Nature, punishable by up to one year in prison and $5,000 for each day of each offense. If a crime against Nature is committed by a corporate entity, the resolution states that the chairman of the board of the corporation should be held personally responsible for the crime (Ponca Tribe of Oklahoma 2018). Secondary laws establishing indicators for these crimes have yet to be developed.

The Ponca RoN resolution contains several sections that illustrate the consistency between Ponca cosmovision and Earth jurisprudence. For example, it recognizes natural laws that predate human laws and apply to all beings. It recognizes that Nature "gives sustenance and the opportunity for all people for all intellectual, moral, social, and spiritual growth," and states that the well-being of all "people throughout the world" depends on the protection of Nature. Like New Zealand's RoN laws, the Ponca resolution establishes a duty and responsibility "to not harm all things in Nature which are related to us and are a part of us." It is based on the Ponca belief of original instructions from Wakanda that "human beings are a part of Nature; that water is the container of all life, and that all life is the container of water." Unlike New Zealand's RoN laws, however, the Ponca law does not specify new governance structures to enforce these rights. Rather, it leaves enforcement responsibility to the Ponca Tribal Court and prosecutor for charges of crimes against nature (Ponca Tribe of Oklahoma 2018).

THE CHIPPEWA AND OJIBWE NATIONS

Neighbors of the Ho-Chunk, the Chippewa of Minnesota are similarly fighting the Line 3 oil pipeline through their territory, as well as new copper and nickel mines in the region. In response to a rollback of environmental protections for *manoomin* (wild rice) in Chippewa and Ojibwe territory, the Governor Mark Dayton of Minnesota created the Task Force on Wild Rice. Just before he left office in 2018, Dayton removed all but two Indigenous representatives from the Task Force. To secure better tribal participation,

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the Minnesota Chippewa Tribe (which makes up six of the seven Ojibwe bands in Minnesota) established its own Tribal Wild Rice Task Force with representatives from eleven of the state's Chippewa bands and Dakota communities (*Indian Country News* 2019). After extensive community discussions and evaluation of different models of RoN legislation (e.g., in the Ho-Chunk and Ponca nations and in Bolivia, Ecuador, and New Zealand), the White Earth Band of Ojibwe and the 1855 Treaty Authority passed laws recognizing the rights of *manoomin* for today and for future generations.

The Resolution Establishing Rights of Manoomin emphasizes the linkages between RoN and Indigenous cultural rights, echoing arguments about biocultural rights developing in Ecuadorian and Colombian courts (see chapters 4 and 8). It cites *manoomin* as a "gift to the Anishinaabe people from the Creator or Great Spirit and an important staple of their diets for generations," and notes the "central element of *manoomin* for Anishinaabe culture, heritage, and history, as well as the integral part of the wetland ecosystems and natural communities of their traditional lands" (1855 Treaty Authority 2018).[9]

The resolution echoes rights in Ecuador's constitution, recognizing the right of *manoomin* to "exist, flourish, regenerate, and evolve, as well as inherent rights to restoration, recovery, and preservation." The resolution reserves members' right to harvest *manoomin* and guarantees their right of sovereignty in doing so. The 1855 Treaty Authority reserves the right to enforce the protections of *manoomin* and cites the Clean Water Act, sections 401 and 404, as mechanisms that permit the collective rights of water, "the ecosystem that supports our way of life and because water is life and supports our primary foods of wild rice, fish, and game." The resolution sets punishment for harm to *manoomin* as the maximum fine allowed under tribal law (1855 Treaty Authority 2018).

By framing the rights of *manoomin* as a supplement to the Clean Water Act, the resolution provides a new pathway for infusing tribal norms and cosmology into Western legal traditions. The Chippewa resolution also illustrates yet another adaptation of RoN in response to learning from other Indigenous cases globally (cited in the resolution and in supplementary documents), as well as from the Ho-Chunk and the Ponca.

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THE YUROK TRIBE

Having for centuries lived off the Klamath River and claiming sacred places along it, the Yurok Tribe in May 2019 passed the Resolution Establishing the Rights of the Klamath River, which reflects a growing recognition among US tribes that their laws need to explicitly reflect their values as a community, including their relationship to Nature (Yurok Tribal Council 2019).

The Yurok are the largest tribe in California, numbering about fifty-six hundred members. They signed a treaty with the United States in 1851 but were not recognized by Congress until 1887, when their land was divided into parcels for each tribal member, with surplus lands given to non-Native homesteaders (Smith 2018). The forcible movement of the Yurok to smaller areas of lands along the Klamath impacted their way of life as fishers and their ability to visit their sacred places.

This impact rose to the Supreme Court in 1973 after Raymond Mattz (great-uncle of Amy Cordalis, the legal counsel who helped craft the RoN resolution) was arrested for fishing along the Klamath with friends. Five of their gill nets were taken. Mattz sued the state, arguing that their limitation of land and the inability to gillnet fish no longer fit in with the legal definition of what constitutes Indian Country (the name for Indian lands). Ultimately, the case went to the US Supreme Court, which ruled that the Yurok Tribe was part of Indian Country and that treaty rights to fish by traditional means had to be recognized (US Supreme Court 1973; see also Smith 2018).

This early conflict cemented Yurok Indian territory and was the first of many conflicts over fishing rights between the tribal nation, the state, agricultural communities, and non-Native fishers. Bill Bowers, Yurok Tribe member and father to tribal attorney Amy Cordalis, remembers the phrase "Can an Indian, save a fish," which characterized the acrimony between tribal and nontribal fishers during the 1970s and 1980s. But by 2006 the Klamath Hydroelectric Project and its eight dams were lessening the flow of the river to the point that over four hundred miles of it were closed to fishing (Smith 2018). Four of these dams were scheduled to close by 2020, but the Klamath still contains seven hundred miles of canals and twenty-eight pumping stations for the Klamath Irrigation Project, which can drain nearly half the river's water each year (Nascimento, n.d.).

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Another threat that inspired the current RoN resolution was the dying off of over sixty thousand salmon in 2002, followed by years of drought. Additionally, 2014 saw 81 percent of juvenile salmon infected with *Ceratonova shasta*, a deadly parasite that thrives when water flows are low. The percentage increased to 91 in 2015. *In Yurok Tribe et al. v. US Bureau of Reclamation et al.*, the US Ninth Circuit Court ruled in favor of the tribe, empowering them to restore fisheries that were "staggering" and "unlawfully long overdue" for restoration (Smith 2018). In April 2018, under appeal by the Klamath Irrigation Project (composed of Klamath basin farmers), the court ruled again in favor of the Yurok Tribe.

It was against this backdrop that the tribe wrote and adopted its RoN resolution in 2019. Mirroring the cosmology of other Indigenous groups, the Yurok resolution links RoN with Indigenous cultural rights. It recognizes rights for the "whole land" of the Yurok territory, "to include the river, the trees, the salmon, elk, deer," and other forms of life. It also recognizes that "all native species within and dependent on the Klamath River ecosystem are vital to the cultural, legal, subsistence, and economic interests" of the tribe (Yurok Tribal Council 2019). Further, the Yurok weave in the UN Declaration of the Rights of Indigenous Peoples, articles 26 and 29, to sustainably harvest plants and fish and to conserve and protect territory. In this way the Yurok resolution frames RoN as part of a set of biocultural rights that include Indigenous rights, similar to the biocultural rights expressed in Ecuador's court rulings relating to the Cofán and Waorani nations (see chapter 4) and Colombia's Constitutional Court ruling for the Atrato River (see chapter 8).

Like the Māori of New Zealand, the Yurok view the protection of the Klamath as their "sacred responsibility . . . and essential to their survival." Yet the Yurok resolution does not form a guardian council for its protection, common in legal personhood model laws, instead favoring the Nature's rights model approach of granting all Yurok people the right to protect the Klamath River in court (Yurok Tribal Council 2019). The RoN norm underlying the Klamath River's right to "exist, flourish, and naturally evolve" similarly draws on developments in Nature's rights model countries. Thus, the Yurok RoN resolution demonstrates how the translation of Indigenous cosmology into Western legal codes within a sovereign tribal system continues to prompt the evolution of RoN legal frameworks.

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CHAPTER SUMMARY

These US cases differ in many respects from those covered in previous chapters, but they continue to tell a common overall story. Local communities increasingly concerned with the degradation of local ecosystems searched for new legal tools to expand their authority to protect the ecosystems on which they depend. Chapter 3 showed how early RoN laws in the United States, Ecuador, and New Zealand emerged through parallel and largely independent processes, producing distinct models for institutionalizing RoN and Earth jurisprudence norms. This chapter shows how transnational networks that were subsequently formed facilitated new RoN legal provisions within the United States that adapted the Nature's rights model, causing it to evolve. Members of RoN networks helped diffuse the idea of RoN to various localities, educating and mobilizing communities, sharing lessons learned about implementing RoN and the implications for designing new laws, providing legal representation, and advising governing bodies and communities. Yet RoN was given different institutional expression in each case due to the need to adapt to unique local circumstances and challenges.

The Grant Township, Highland Township, and Santa Monica cases provide examples of what RoN can look like when implemented in a Western legal context not influenced by Indigenous cosmovision. These ordinances root RoN within traditional US values about the right of communities to self-determination. The concept of "community" is expanded to include both human and "natural communities," the latter having the right to "exist, flourish, and naturally evolve" (Grant Township 2014; Highland Township 2013).

The ordinances also illustrate various pathways for pursing RoN at the local level and the challenges this poses. Because of the US federal structure and political paralysis in Congress, activists have focused instead on mobilizing local community support in order to codify RoN through local ballot initiatives rather than stronger national laws. While this pathway is understandable, the subordinate status of local ordinances presents an obstacle to the implementation of RoN. The efforts in Grant and Highland Townships exemplify municipal-level attempts across the United States to implement RoN through dedicated community organization and mobilization.

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While they show growing social support for RoN and Earth jurisprudence norms, the cases also illustrate the limitations of trying to enforce local legal provisions through the courts. We argue, however, that these local ordinances nonetheless constitute significant tools in norm contests not because they have proven effective in court but because they are raising the salience of RoN within the United States and helping to mobilize social support for normative change. The perseverance of Grant Township shows how powerful it can be to organize and activate a social movement; its experimentation with the use of a home rule charter and the Environmental Rights Amendment of the Pennsylvania constitution shows that the norm contest is far from over.

The Santa Monica case suggests that it may be more influential to persuade city officials to incorporate RoN into their policy planning process for sustainable development. Rather than challenging violations in court, this strategy incorporates RoN into the principles guiding planning for the city's long-term goals. This allows regulatory standards and benchmarks to be linked to RoN proactively. Perhaps Santa Monica's most important adaptation is the development of quantifiable metrics for measuring the well-being of ecosystems, which serve as a set of standards for protecting RoN (and human environmental rights). These metrics are placed on a website and publicly reported every twenty-four months. One indicator of the strength of Santa Monica's Sustainability Rights Ordinance is the subsequent Sustainable Groundwater Management Plan (City of Santa Monica 2019), which cites the ordinance as grounds for managing groundwater in an ecologically sustainable manner. As of this writing, residents have not challenged any part of the ordinance.

Each of the three municipal cases studied provide lessons for incorporating RoN into sustainable community planning. Santa Monica is moving forward on metrics and standards that clearly define RoN. Highland Township demonstrates the need for both municipal supervisor and citizen support for continued implementation of RoN in a community, showing that both structure and mobilization matter. Finally, Grant Township shows that it is problematic to use procedural requirements like conventional environmental assessments as a metric for sustainability, not to mention grounds for dismissing RoN. We address this issue in more detail in chapter 8.

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Each of these communities is acutely aware that it is on the front lines of a normative battle to redefine what sustainable development means by reconceptualizing humans' relationship with Nature. US tribal communities are also working to facilitate this paradigm shift. Even though the rights framing is foreign to many, a growing number of tribal nations are adopting RoN legal provisions in order to translate Indigenous understandings of humans' relationship and responsibility toward Nature into legal provisions that are more easily understood by non-Indigenous audiences. In addition to enhancing their ability to protect their ecosystems, the hope is that these RoN laws can also help non-Indigenous audiences to understand their paradigms.

Unlike in the US municipal cases, tribal nations are unique, sovereign entities with the capacity to amend their constitutions. Each has its distinct governing system, and each has pursued a different pathway for institutionalizing RoN in the face of challenges, illustrating the kinds of strategic decisions that must be made and the need to adapt to local context.

In each case the US tribes have established unique institutional structures for recognizing the rights of their ecosystems within a sovereign tribal governance system. Notably, the Yurok Tribe cites the UN Declaration on the Rights of Indigenous Peoples and their right to sustainably harvest and fish in their territory. This shows how RoN norm construction in the United States, while grounded within municipalities and tribal nations, interacts with broader global normative developments and treaties that relate to sustainable development.

While the seventeen UN Sustainable Development Goals are neatly boxed and divided into social, economic, and environmental areas, the UN's 2030 Agenda for Sustainable Development clearly speaks to integrated and coexisting principles "in harmony with Nature and all living beings" (United Nations General Assembly, 2015b). The tribal RoN legal provisions model an approach that integrates not only these three areas but also Indigenous and Western epistemologies and legal systems. Consequently, they provide a model for a more holistic approach to sustainable development. The same can be true at the global level: Indigenous knowledge and cosmology, as evidenced by various cases in this book, provide a systems-level approach that can be applied to new ways of thinking about sustainable development. They show how a recognition that human well-being is

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tied to the health of the ecosystems that provide the conditions for all life may be incorporated into Western legal frameworks.

The Grant Township, Highland Township, and Santa Monica cases show that a similar systems-level approach can be advanced in non-Indigenous societies by expanding the notion of community to include all members of the biotic community. The important point is that RoN only contributes to a more ecologically sustainable approach to development to the extent that it is used as a legal tool for implementing new systems based on Earth jurisprudence principles, regardless of whether these principles come through Indigenous knowledge or understandings of community rooted in ecological science and environmental ethics. Chapter 8 shows how RoN legal provisions that are divorced from Earth jurisprudence principles can prove ineffective or even produce perverse outcomes.

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8

THE EVOLUTION OF THE LEGAL PERSONHOOD MODEL THROUGH THE COURTS

Between 2016 and 2020, a number of courts issued rulings recognizing the rights of rivers and lakes in Bangladesh (all rivers); Colombia (the Atrato, Cauca, Cocora, Coello, Combeima, La Plata, Magdalena, and Quindio Rivers, and Tota Lake); and India (the Ganga, or Ganges, and Yamuna Rivers and Sukhna Lake). What makes these rights of Nature (RoN) legal provisions different from the others mentioned so far in this book is that Bangladesh, Colombia, and India do not recognize rights for these ecosystems in their constitutions, national laws, or subnational laws.[1] Rather, judges in these three countries issued rulings recognizing the rivers and lakes as legal persons, moving them from "right-less to rights-bearing" entities (Margil 2017, 27).

This chapter examines court rulings recognizing the rights of the Atrato River in Colombia and the Ganga and Yamuna Rivers in India, and specifically the unique institutional structures mandated to protect those rights.[2] These cases provide a valuable lens for analyzing the politics of implementing Earth jurisprudence for three reasons. First, these cases show the diffusion of the legal personhood model pioneered in New Zealand, and also show how the model evolved as it was adapted to fit varying unique conditions. Second, the cases show how RoN jurisprudence is evolving as a result of this experimentation, with an emphasis on the role of judicial interpretation. In this way the chapter builds on

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our analysis of how judges are shaping RoN normative development in Ecuador (see chapter 4).

Third, the chapter shows the interaction between the domestic and international levels in RoN norm construction. The Colombian and Indian cases illustrate how the RoN norm now circulating globally as a result of the networks described in chapter 2 are being institutionalized through court rulings even in countries that lack laws explicitly recognizing RoN. Moreover, our case comparisons illustrate the domestic effects of the transnational diffusion of RoN laws. Specifically, they show how judges strategically interpret existing constitutional provisions and other laws that do not explicitly recognize RoN in order to justify court orders that establish natural ecosystems like rivers as legal persons with rights. By linking RoN to established legal principles, judges cause RoN jurisprudence to evolve in ways that can be unexpected and at times unwelcome by some RoN advocates, fueling normative contestation surrounding it at the international level. Consequently, this chapter highlights the key role of judges in strengthening RoN jurisprudence, the expanding set of legal doctrines being used to support RoN worldwide, and the impact on norm contestation internationally.

The Colombian and Indian judges justified their extraordinary actions in part by noting the need to address serious threats to important river ecosystems (and the communities that depend on them) in the face of government inaction, citing other countries' RoN laws as precedent (Corte Constitucional de Colombia 2016; *Times of India* 2017). In addition to analyzing the evolution of RoN jurisprudence, we show how RoN legal provisions are being combined with new governance structures designed to implement more ecocentric approaches to solving the difficult challenges of sustainable development in the face of extractive industries. At the center of these new governance structures are guardianship bodies charged with representing rivers and promoting their rights and well-being. In this way they follow the legal personhood model discussed in chapters 1 and 6.

The institutionalization of RoN in Colombia and India is largely based on New Zealand's pioneering model. In addition to establishing the Whanganui River as a legal person, New Zealand's 2017 Te Awa Tupua Act established guardians charged with representing the river's interests.

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This guardian body was then embedded within a larger integrated watershed management body charged with managing the river's resources in a sustainable way consistent with the river's status as an integrated, living, spiritual being.

While both Colombia's and India's court rulings mimic New Zealand's model, Colombia follows it more closely than does India, in part due to the distinct legal doctrines invoked. Colombia's court ruling not only created a guardian body comprised of state and civil society representatives but also restructured government entities and created a new oversight commission to protect and preserve the Atrato River. By contrast, India's court ruling did not incorporate civil society representatives into the guardian body and did not restructure government agencies to manage the river basins in a more integrated way. As we detail herein, these differences undermined implementation efforts and suggest challenges that have not been adequately addressed by RoN scholars. Our case comparisons highlight how judges' strategic use of existing legal doctrines to justify RoN can produce unintended complications during implementation. We address this phenomenon and offer some initial lessons learned in the final section of this chapter and in the book's Conclusion.

While the Colombian and Indian court rulings reflect a global movement to institutionalize RoN as a means for achieving ecologically sustainable development, they emanated from local communities' struggles to protect their ethnic and cultural identities, the places they hold sacred, and the water on which they depend for life. The rulings do not merely parrot global discourse regarding RoN but interpret the emerging global norm within the context of domestic law and culture, creating unique institutional expressions. In sum, the Colombian and Indian cases demonstrate how normative underpinnings at the local and global levels converge to develop new legal tools and governance structures based on the normative assumption inherent in Earth jurisprudence that the law should not dominate Nature but rather be embedded within it.

This chapter shows the perverse outcomes that can occur when the concept of legal personhood for Nature is applied in a context divorced from Earth jurisprudence. In doing so it highlights the importance of distinguishing between RoN legal provisions and Earth jurisprudence (what some call a RoN approach), and the need to remember that RoN

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legal provisions are not themselves the ultimate goal but merely a tool for achieving governance systems rooted in Earth jurisprudence.

The remainder of this chapter first summarizes the key features of New Zealand's law recognizing the rights of the Whanganui River, which provided a model for the Colombian and Indian court rulings on river rights. We then detail these court rulings, showing how they draw on normative arguments circulating globally and largely replicate the New Zealand model but adapt it to fit domestic conditions by strategically interpreting existing domestic law. The final section notes key similarities and differences between the New Zealand, Colombian, and Indian RoN legal provisions and offers some preliminary lessons to consider.

NEW ZEALAND'S PIONEERING GUARDIANSHIP MODEL

New Zealand's Te Awa Tupua Act codifies the intrinsic values of the river ecosystem according to the Māori worldview, recognizing it as a legal person with rights, appointing guardians, and embedding the river (via its guardians) within a new governance institution tasked with managing the river in an integrated way that is consistent with Earth jurisprudence principles (New Zealand Parliamentary Counsel Office 2017). As part of this governance arrangement, the act creates an advisory group, Te Karewao, to provide technical and administrative support to the guardians. This system allows the river's interests and rights to be addressed proactively by incorporating them into watershed management decision-making processes. The law's legal personhood provision is important primarily for allowing the river to participate directly in these decision-making processes (via its guardians). This contrasts with the more reactive approach of the Nature's rights model, which enumerates unique RoN but requires defenders of Nature to voluntarily challenge violations through the courts.

New Zealand's recognition of river rights quickly gained international attention, in part due to the promotional efforts of the transnational RoN networks discussed in chapter 2.[3] In the following sections we show how judges in Colombia and India cited the Te Awa Tupua Act to justify recognizing RoN; they replicated key elements of New Zealand's guardianship model through court decisions meant to address serious threats to

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important river ecosystems in the face of government inaction. While the judges drew on New Zealand's precedent, they also justified their decisions by strategically interpreting domestic laws not explicitly recognizing RoN. Consequently, they had to adapt the model to distinct legal and sociopolitical environments, with varying outcomes that we analyze in the chapter summary.

RECOGNIZING RIGHTS FOR COLOMBIA'S ATRATO RIVER

In November 2016, Colombia's Constitutional Court declared the Atrato basin to be a legal person possessing the rights to "protection, conservation, maintenance, and restoration." While the Colombian Constitution does not explicitly recognize RoN, Judge Jorge Ivan Palacio ruled that it is part of a set of "biocultural rights" that may be inferred from guarantees in the constitution for biodiversity, cultural, and humanitarian protections (Corte Constitucional de Colombia 2016).[4] The biocultural argument is unique in that it connects the special designation and rights of Colombian Indigenous and Afro-Colombian citizens, protections for the ecological diversity of the Chocó region, and the rights of the Atrato River, which flows through the region. Judge Palacio argued that the rights of people living in the Chocó region are intertwined with the rights of the Atrato River, thus necessitating both biological and cultural rights.

THE BACKGROUND OF THE ATRATO RIVER CASE

Chocó constitutes 4 percent of Colombia's territory and is one of the most biodiverse regions on the planet. Ninety percent of its territory is a special conservation zone, home to Ensenada de Utria, Los Katíos, and Tatamá National Parks. The Atrato River is located in a large valley and represents 60 percent of the Chocó region's area. Chocó is home to about 500,000 residents, of which 87 percent are of African descent, 10 percent are Indigenous, and 3 percent are mestizo. The population is organized into collective institutions, including six hundred Afro-Colombian organizations in seventy communities and 120 Indigenous organizations (Corte Constitucional de Colombia 2016). The communities that live along the Atrato River are agricultural, growing corn, rice, cacao,

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coconuts, sugarcane, plantains, and other products. Fishing and artisanal mining are also traditional activities. Most communities are organized in campesino collectives and are subsistence communities, living off the river and the land.

Since the rise of armed conflict in the 1970s, community members face greater levels of violence, and many have been displaced. These threats are exacerbated by rich deposits of gold, platinum, and minerals in the river that are sought after by armed combatants. Despite such natural resource wealth, 49 percent of the region's citizens live in extreme poverty, and 83 percent do not meet the basic minimum needs for living (Corte Constitucional de Colombia).

While mining has been present in the Chocó region for centuries, current large-scale mining and illegal logging practices have severely impacted traditional ways of life for Afro-Colombians and Indigenous peoples. Illegal logging has changed the flow of the river, and mining has increased the level of toxic chemicals entering the river system. Logging has also caused sedimentation in the river, which threatens many species.

Chemicals used in illicit mining (among others, mercury and cyanide) have severely impacted the most vulnerable people in these societies, including children. A 2014 report documented thirty-four Indigenous child deaths and an increase in illnesses such as dengue, malaria, and dysentery (Defensoría del Pueblo Colombia 2014). Such public health crises coincide with an increase in large-scale illegal mining. A 2016 study shows that miners in the Chocó region are exposed to mercury levels far in excess of acceptable levels set by the World Health Organization (Corte Constitucional de Colombia 2016; Rojas and Montes 2016). According to Mercury Watch, Colombia emits 180 tons of mercury due to gold extraction each year (Godoy 2014). Because mercury is the most toxic nonradioactive substance in Nature, the health impacts on Chocó's communities are significant (Olivero 2016). By the beginning of the twenty-first century, the river's level of contamination had negatively impacted food, water, and health, as well as local communities' culture and spiritual places.

In 2011, local communities asked the National Mining Agency to stop illegal activity, producing Decree 4134 to suspend mining concessions. In 2013–2014, the National Mining Agency worked with the community in Chocó to create sustainable mining practices. Nevertheless, in 2014

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the Defensoría del Pueblo declared a state of human and environmental emergency in Chocó. The agency noted with alarm that neither national nor local government agencies had taken action to confront the serious situation threatening the Atrato River, its tributaries, the forest, and the people dependent on them.

In light of these grave circumstances, an intergovernmental panel, the Interinstitutional Mining Working Group, was formed in 2014. But Chocó residents complained that the intergovernmental panel did not meet and was not effective. Frustrated with the government's failure to take action, community organizations filed a motion for protection in the Administrative Tribunal of Cundinamarca in January 2015. The plaintiffs included the Center for the Study of Social Justice "Tierra Digna," representing the Association of Community Councils of Bajo Atrato; the Community Council of the Integral Campesino Association of Atrato; the Community Council of Campesinos of Alto Atrato; and the Inter-Ethnic Forum of Chocó Solidarity.

On January 27, 2015, the Administrative Tribunal of Cundinamarca decided against protective action for the community. It argued that the government ministries named in the suit were not competent to provide protection, as this did not fall within their prescribed duties under the national law. The tribunal ordered the interinstitutional working group formed in 2013–2014 to meet and create sustainable mining practices and policies. Frustrated with the lack of progress, the plaintiffs brought their case to the Sixth Circuit Constitutional Court for review in November 2016 (Corte Constitucional de Colombia 2016).

JUDGES JUSTIFYING RIGHTS FOR THE ATRATO RIVER

Colombia's Constitutional Court ruled in favor of the Chocó residents. Citing the precedent established by New Zealand's RoN laws, the court issued orders to implement provisions that, not coincidentally, mirror almost exactly the key provisions in New Zealand's Te Awa Tupua Act. These orders include the following provisions:

1. The court recognized the Atrato River as a legal person with rights to protection, conservation, maintenance, and restoration by the state and ethnic communities.

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2. The court ordered the creation, within three months, of a guardian body—the Commission of the Guardians of Atrato River. The commission should include two designated guardians as well as an evaluation team from the Humboldt Institute and World Wide Fund for Nature–Colombia (WWF Colombia).
3. The court ordered that a panel of experts convene to assist the guardians. Their role is that of auditors to verify that the work to restore the Atrato River is completed, to accompany the guardians, and to supervise such work. This is similar to the role of Te Karewao in New Zealand's Te Awa Tupua Act.
4. The court embedded the above RoN legal provisions within an integrated watershed management governance body. It ordered the Ministries of Defense, Environment, and Housing; the departmental governments of Antioquia and Chocó, the Humboldt Institute, the Pacific Environmental Research Institute, the Universities of Antioquia and Cartagena, WWF Colombia, and other organizations linked to local ethnic communities to collectively implement an integrated watershed management plan to clean the Atrato River and its tributaries. The plan must: (1) reestablish the river channels, (2) eliminate mining activities, and (3) reforest affected areas. (Corte Constitucional de Colombia 2016)

In addition, the court ordered the Ministry of Defense, the National Police—Unit against Illegal Mining, the National Army of Colombia, the General Prosecutor's Office of the Nation, the governors of Chocó and Antioquia and the related municipalities to eradicate illegal mining in the Atrato River. It also ordered the Ministries of Agriculture, Housing, and Interior; the Departments of National Planning and Social Prosperity; and the governors and municipalities of Chocó and Antioquia to create integrated action plans to restore traditional forms of subsistence farming and cleaner food sources. Finally, the court ordered the Ministry of Environment, the Ministry of Health, and the National Institute of Health—with the support of the Universities of Antioquia and Cartagena, the Pacific Environmental Research Institute, and WWF Colombia—to initiate epidemiology and toxicology studies to establish a baseline of environmental indicators for the region (Corte Constitucional de Colombia 2016).

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How did the Constitutional Court justify this ruling, given that Colombia's constitution does not specifically recognize RoN? First, Judge Palacio invoked article 215 of the constitution, which allows the government to declare a "state of emergency" when there is "a grave or imminent" threat to "the economic, social, or ecological order of the country" (Corte Constitucional de Colombia 2016; Republic of Colombia 1991).

Judge Palacio also noted that the constitution recognizes special protection for Afro-Colombian and Indigenous ethnic groups, which are culturally distinct from the "dominant culture" (Corte Constitucional de Colombia 2016). The ruling gave the Chocó region's ethnic and Indigenous organizations the authority to represent the collective will of the peoples of the Chocó region.

The judge then outlined the constitution's "social state of rights" that encompass human dignity, social justice, well-being, protections for vulnerable peoples, cultural and ethnic diversity, and protection of the environment and natural resources. He argued that these constitutional principles form an ecological constitution that justifies the protection not only of a pluralist society with diverse cultures but also of the environment in which those peoples live. Alluding to RoN and Earth jurisprudence norms circulating globally, Judge Palacio noted the spiritual importance of natural resources and the environment for many cultures. He argued that the cultural, economic, social, and environmental rights recognized in the constitution combined to form a set of "biocultural rights" (Corte Constitucional de Colombia 2016).

Judge Palacio based his decision to give the Atrato River legal personhood status on this concept of biocultural rights, which emphasizes that the rights of peoples and Nature are inextricably linked. Consequently, he argued that such rights should prevent (or proactively control) environmental destruction and should support conservation, restoration, and sustainable development (Corte Constitucional de Colombia 2016).

The judge's decision also recognized that sustainable development solutions require integrated responses, and that the state is not structurally organized in an integrated manner to adequately meet the needs presented by the case. Consequently, the ruling orders a restructuring of the state and the creation of an institutional framework not only for guardianship, but also for the integrated care of the peoples and ecosystems of

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which they are a part (Corte Constitucional de Colombia 2016; see orders 3–4 above).

In addition to the constitutional provisions, Judge Palacio justified the ruling by citing Colombia's ratification of international treaties, including the Stockholm Convention (1972), the International Labor Organization's Convention 169 (1989) for prior informed consent to communities regarding activities in their territories, the United Nations (UN) Convention on Biological Diversity (1994), the UN Declaration on the Rights of Indigenous Peoples (2007), the American Declaration on the Rights of Indigenous Peoples (2016), and the UN Educational, Scientific and Cultural Organization's Convention for the Safeguarding of the Intangible Cultural Heritage (2003). Judge Palacio noted that these international laws and New Zealand's RoN laws contributed to the conception of biocultural rights in his decision. Moreover, he emphasized that his orders to restructure governance, including a guardianship body for the Atrato River, are meant to fulfill the UN's 2030 Agenda for Sustainable Development, which calls for a unified approach to social, economic, and environmental solutions and planning in states and includes universal access to water and health as one of its seventeen global objectives (Corte Constitucional de Colombia 2016).

CHALLENGES TO IMPLEMENTATION

The original plan for the guardianship body was to follow the example of New Zealand's Te Awa Tupua act, with one government representative and one community representative. In July 2017, Colombian president Juan Manuel Santos appointed the Ministry of Environment as the government's designee to the Guardian Council for the Atrato River. Civil society rejected the idea of just one community representative, saying they needed a whole community council to ensure the involvement of various community actors and enhance their capacity to take action (Mosquera 2020). This request was approved and fourteen community members from the Chocó region were selected to serve on the Guardian Council, chosen based on their leadership in the organizations involved in the court ruling (Silva Numa 2017). The council itself was formed in May 2018 (Becerra 2018). Five committees representing appropriate government institutions

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were created to coordinate and implement policies relating to the river, including decontamination (Ministry of Environment); eradication of illicit mining (Ministry of Defense); food security (Ministry of Housing); and toxicology and epidemiology studies (Ministry of Health; see *Semana* 2017b). Civil society members of the Guardian Council created three working groups to coordinate with various community stakeholders: the Roundtable of Indigenous Communities, the Environmental committee of Carmen del Atrato, and the Community Councils of Rio Quito (Mosquera 2020).

In the first 18 months of its existence, the Guardian Council focused on five types of actions: holding workshops and events to educate the public about the court ruling and the Guardian Council's work, engaging in advocacy to mobilize support, creating working groups to coordinate with the institutions responsible for implementing the court's orders, writing publications and creating culturally appropriate oral presentations, and developing action plans (Mosquera 2020). From the government's perspective, Colonel Juan Francisco Peláez of Colombia's Anti–Illegal Mining Unit says that the constitutional decision to give rights to the Atrato River has improved his coordination with the military and the treasury. He also notes that the structural changes provide institutional solutions to these complex problems (*Semana* 2017a).

Yet, implementation efforts face many challenges and change will not come over night. This area of the country is riddled with increasing tensions caused by members of the Armed Revolutionary Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, or FARC) and the National Liberation Army (Ejército de Liberación Nacional, or ELN) who seek more land from the community for illicit drug cultivation and illicit gold mining. Members of the Afro-Colombian and Indigenous communities that live in collectively protected territories fear reprisal for their support of the protection of the Atrato River. All fourteen guardians have asked for protection from the National Protection Unit, the state security organization charged with protecting human rights, but only three have received protected status (Ávila 2018). The guardians say that ELN, FARC, and other illicit actors blame them for stronger oversight in the region. In the first three months of 2018, forty-six social and environmental activists and leaders were murdered for protecting their communities and

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Nature in Colombia; several were from the Atrato River region (*El Espectador* 2018). As noted in chapter 1, water protectors worldwide are regularly targeted, with 164 environmental activists killed in 2018 (Global Witness 2019).

Constitutional Court judges Jorge Ivan Palacio and Armando Tolosa Villabona recognize the conflict in these zones and the need to codify their protection (Palacio and Tolosa Villabona 2018). In a December 2017 interview, Judge Palacio explained his decision to give the Atrato River rights: "When the tutela [legal petition for protection] came to my office, I knew what path I should follow. Nature has a right not to be contaminated, not to be destroyed, to be used rationally" (quoted in *El Espectador* 2017). Palacio's decision recognizes that humans are part of Nature, a fundamental principle of Earth jurisprudence. According to the judge, the interdependency between humans and other elements of Nature means that the dominant anthropocentric approach to development must be replaced with an emphasis on "ecocentrism in which the human is just one more species within Nature, like fauna, flora, and other species" (quoted in *El Espectador* 2017).

The court ruling recognizing the rights of Colombia's Atrato River shows how normative underpinnings for RoN are diffusing globally and may be institutionalized even when laws explicitly recognizing such rights are absent. To do so, judges strategically interpret existing domestic laws in light of global RoN and Earth jurisprudence norms. This expands the range of legal doctrines being invoked worldwide to justify recognition of RoN. In Colombia's case, judges began developing jurisprudence that connects RoN and human rights through the concept of biocultural rights but framed RoN as necessary for meeting human environmental and cultural rights. This mirrors the evolution of RoN jurisprudence developing in Ecuadorian courts (see Chapter 4), and we will return to this topic in the book's Conclusion.

Moreover, this Colombian case shows how—despite the inevitable challenges of implementation—RoN legal provisions like legal personality and guardianship are given greater force through their incorporation into new governance structures designed to develop new solutions for the difficult and complex challenges of sustainable development in the face of extractive industries, illicit drug cultivation, and the aftermath of over fifty years of conflict in the region.

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RECOGNIZING RIGHTS FOR INDIA'S GANGA AND YAMUNA RIVERS

On March 20, 2017, the High Court of Uttarakhand (HCU), in the Indian state of Uttarakhand issued a ruling declaring that "the Rivers Ganga and Yamuna, all their tributaries, streams, every natural water flowing . . . continuously or intermittently of these rivers, are declared as juristic / legal persons / living entities having the status of a legal person with all corresponding rights, duties and liabilities of a living person in order to preserve and conserve [the] river[s] Ganga and Yamuna." Based on these rights, the court ordered government agencies to take specific actions to "promote the health and well-being of these rivers" (High Court of Uttarakhand at Nainital 2017a).

PUBLIC INTEREST LITIGATION TO RESTORE THE GANGA

The HCU's ruling provides another example of courts recognizing RoN in the absence of laws explicitly recognizing such rights. The state court's ability to issue such orders stems from a provision in the Constitution of India allowing public interest litigation. Public interest litigation was introduced in 1986, justified under article 32 of the constitution, as a way to give marginalized groups in society access to justice when the state fails to address problems of public interest (Bhuwania 2018). It allows any individual or nongovernmental organization to seek legal remedy from the courts when they can demonstrate that the public interest is at stake and the state has failed to take action. Notably, citizens do not have to be victims of a violation to bring public interest lawsuits. Moreover, a court may introduce public interest litigation unilaterally. Public interest litigation has been used extensively to address environmental harms in India. While Indian courts' use of environmental public interest litigation has been inconsistent, studies show that the practice is widely accepted and, in some cases, has reduced pollution levels (Faure and Raja 2010; Sahu 2008).

The 2017 HCU ruling came after decades of failed government programs designed to clean up the Ganga River, which is one of the most sacred rivers for Hindus, believed by many to contain divine properties. It is also strategically important, as many cities are built on its banks and millions of people depend on it for their survival. The Ganga and the Yamuna (the Ganga's longest tributary) are also highly polluted. The government's first

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attempt to clean up the Ganga was in 1985 with the Ganga Action Plan. The second was the National Ganga River Basin Authority's Clean Ganga Mission in 2009. Both were unqualified failures (Das 2017). The latest attempt to restore the Ganga is Namami Gange ("Obeisance to Ganga" in Sanskrit), an initiative launched in 2014 by the Hindu nationalist Bharatiya Janata Party government.

The process leading to the HCU's historic ruling began when Mohammed Salim, a man living in the village of Kuhlal, in Uttarakhand, complained to the state authorities about encroachments on the banks of a canal emerging out of the Ganga in the state capital. The encroachments resulted from illegal construction undertaken by private actors engaged in mining and stone crushing on land operated by the Uttarakhand Irrigation Department. State authorities sent letters ordering the illegal encroachments to be removed and further construction stopped. The private actors refused and sought an injunction against the order. They argued that they had purchased the land from the state of Uttar Pradesh, which they argued owned the land at the time of sale (Uttarakhand was carved out of Uttar Pradesh as a separate state in 2000). Thus, the case was complicated from the beginning by interstate disputes over land and the diversion of water from the Ganga (the river serves power stations in both states).

Frustrated by the lack of action, in 2014 Salim filed a public interest lawsuit with the HCU to stop the construction and mining, to have the encroachments removed, and to address the high levels of pollution in the Ganga and its tributaries (High Court of Uttarakhand at Nainital 2017a). The lawsuit also called on India's central government to settle the disputes over the distribution of land and water between the two states in order to stop the encroachment on government lands. The process dragged on for several years and, despite numerous court orders directing Uttarakhand state authorities to remove the encroachments, no action was taken by the state.

JUDGES JUSTIFYING RIGHTS FOR THE GANGA AND YAMUNA RIVERS

On March 20, 2017, the HCU issued its ruling, in which it ordered the Ganga and Yamuna Rivers to be treated as living entities with all the

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rights and responsibilities of legal persons. Like the Atrato River case, the original lawsuit never asked to declare the rivers legal persons; the judges took this step unilaterally. In justifying this extraordinary step, the court noted, "The extraordinary situation has arisen since [the] Rivers Ganga and Yamuna are losing their very existence. This situation requires extraordinary measures to be taken to preserve and conserve [the] Rivers Ganga and Yamuna" (High Court of Uttarakhand at Nainital 2017a).

The court cited as precedent the New Zealand government's recognition of the Whanganui River as a legal person (*Times of India* 2017). Nevertheless, the HCU had to justify the ruling by interpreting domestic legal provisions. The judges noted that the Indian Supreme Court had "held that the concept 'Juristic Person' [i.e., legal personhood] arose out of necessities in human development—Recognition of an entity as [a] juristic person is for subserving the needs and faith of society." Additionally, the HCU cited previous Indian court rulings establishing that Hindu idols representing deities can have legal personhood status and can sue to protect their interests due to their spiritual role in subserving the needs and faith of the society. The court argued that, similarly, "the Rivers Ganges and Yamuna are worshipped by Hindus. These rivers are very sacred and revered. The Hindus have a deep and spiritual connection with Rivers Ganges & Yamuna. According to Hindu beliefs, a dip in River Ganga can wash away all the sins. . . . Thus, to protect the recognition and the faith of society, Rivers Ganga and Yamuna are required to be declared as the legal persons/living persons" (High Court of Uttarakhand at Nainital 2017a).

The HCU also argued that "there is utmost expediency to give legal status as a living person / legal entity to Rivers Ganga and Yamuna" because of the government's failure to adequately address articles 48A and 51A(g) of the Indian constitution (High Court of Uttarakhand at Nainital 2017a), which require the state to "endeavor to protect and improve the environment" and oblige Indian citizens "to protect and improve the natural environment including forests, lakes, rivers and wild life," respectively (Republic of India 1949).

After establishing the rivers as legal persons whose well-being is threatened due to neglect, the HCU invoked the legal doctrine in loco parentis (Latin for "in the place of a parent") to make a set of government bodies and officers responsible for acting on behalf of the rivers for their

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protection and conservation. Courts commonly use this legal principle to appoint guardians for children or incapacitated people who cannot defend themselves. Adopting the same logic, the HCU appointed Uttarakhand's chief secretary, the advocate general of Uttarakhand, and the director of Namami Gange as guardians. Acting on behalf of the Ganga and Yamuna Rivers, these state bureaucrats are "bound to uphold the status" of the rivers, to "protect, conserve and preserve" them, and to promote their health and well-being. The advocate general of Uttarakhand is charged with representing the rivers at all legal proceedings (High Court of Uttarakhand at Nainital 2017a).

Finally, the HCU ruling ordered several steps to be immediately taken to begin restoring the river. First, the court ordered Uttarakhand state authorities to evict the private actors engaged in the mining and stone crushing that prompted the suit. Second, it directed India's central government to make a final decision regarding the division of assets and properties between the states of Uttarakhand and Uttar Pradesh within three months. Third, the central government was also directed to create a Ganga Management Board to develop a coordinated approach to managing the river basin. Finally, the court banned mining in the Ganga's riverbed and highest flood plain (High Court of Uttarakhand at Nainital 2017a).

The HCU ruling is similar in several respects to New Zealand's Te Awa Tupua Act. It recognizes the Ganga and Yamuna Rivers as living spiritual beings with legal personhood status, and provides for a guardian body to speak on behalf of the rivers. These provisions tend to receive the most attention by RoN scholars, as they provide the basic framework for RoN. But the HCU ruling lacks several features of the New Zealand model that are crucial to putting RoN into action. First, rather than having local stakeholder groups in the watersheds nominate guardians to protect the rivers, the court appointed state officials to serve as guardians, following the usual procedure when the in loco parentis doctrine is invoked. More important, the ruling did not embed the guardianship body within a multi-stakeholder, collaborative, integrated watershed management body. Nor did it establish a set of Earth jurisprudence principles, based on the character of the rivers as integrated, living, spiritual beings, to guide decision making regarding river management. These differences have undermined efforts to protect the rights of rivers in India, compared to efforts in Colombia and New Zealand.

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A LEGAL CHALLENGE TO THE HIGH COURT RULING

In May 2017, the state of Uttarakhand, along with India's central government and others, filed a petition with India's Supreme Court to overturn the HCU ruling (High Court of Uttarakhand at Nainital 2017b). In other words, the entities appointed by the HCU to be the guardians of the Ganga and Yamuna Rivers sought to have the Supreme Court overturn the ruling naming them as the rivers' legal guardians. The objection to the HCU ruling given in the petition provides insight into the source of concern among the appointed guardians.

The primary complaint appears to be that Uttarakhand authorities do not wish to be held accountable for the Ganga and Yamuna Rivers. In a press conference regarding the Supreme Court petition, Uttarakhand minister and state government spokesperson Madan Kaushik stated, "Let me be very clear that we are not against according living entity status to the two holy rivers Ganga and Yamuna." But, he added, "How can the chief secretary here be held accountable if the river is polluted in West Bengal, Bihar, Jharkhand or UP [Uttar Pradesh]?" (quoted in Singh and Jaiswal 2017).

In part, the complaint notes the problem of a legal provision recognizing the rights of an ecosystem that crosses subnational boundaries. But more important from the perspective of RoN jurisprudence, the petition complains that if the rivers flood and someone dies (as often happens), victims' families could potentially sue for damages against the chief secretary. Consequently, the petition asks the Supreme Court to determine whether the state government (as the rivers' "legal parents") would be liable to bear the financial burden of harms caused by the river (High Court of Uttarakhand at Nainital 2017b).

This concern stems from the use of the in loco parentis doctrine. In conventional applications, such as with children, court-appointed "parents" do not simply speak for those in their charge; they are also responsible for what their wards do. Making guardians of natural ecosystems liable for damage done to humans in the course of regular ecosystem functioning is, of course, problematic. It contradicts the logic behind Earth jurisprudence by reproducing the problematic view of humans as controlling Nature and possessing greater authority than natural ecosystems, rather than viewing humans as one cog within the ecosystem. And it reverses the natural order of things by embedding Nature within human economic and governance systems rather than the other way around.

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This dilemma has fueled normative debate internationally among RoN scholars and practitioners about how to conceptualize RoN and the desirability of using legal personhood status to protect ecosystems, a subject we will return to in the book's Conclusion. Nevertheless, this legal question of guardian liability must now be addressed due to the use of the in loco parentis doctrine to justify RoN legal provisions. In this way the HCU case illustrates the unintended consequences for RoN jurisprudence that arises from judges' strategic interpretation of existing laws to justify recognizing RoN.

The petition also cites several other objections related to jurisdictional issues resulting from the fact that the HCU ruling addresses river basins spanning multiple states (High Court of Uttarakhand at Nainital 2017b). Uttarakhand state authorities argue that the HCU does not have the authority to tell other states what they must do. Does Uttarakhand's chief secretary, as the river's legal parent, have the authority to give orders to other states or to the federal government? Can court cases related to the river only be filed in the name of the chief secretary (thus denying this legal authority to other states and the central government)? Since the river basin is one legal person spanning state boundaries, is it possible to file separate litigation in different states? Previously, the National Green Tribunal had jurisdiction to determine cases of encroachment; will the chief secretary now have to submit cases before courts of law? These are the kinds of jurisdictional questions that India's Supreme Court must answer if it chooses to uphold the HCU ruling.

India's Supreme Court agreed to hear the petition and temporarily stayed the HCU ruling until the Supreme Court issues its decision (Rautray 2017). No decision had been issued at the time of this writing in January 2021.

CHAPTER SUMMARY

The lawsuits producing court rulings recognizing rights for the Atrato, Ganga, and Yamuna Rivers were not spearheaded by RoN activists. These lawsuits sought to protect the rivers, but not by recognizing RoN. The judges deciding these cases unilaterally invoked RoN, drawing on RoN principles and models circulating globally through transnational networks of environmental lawyers and activists. Specifically, the Colombian and Indian judges

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cited New Zealand's 2017 Te Awa Tupua Act as precedent, and their rulings replicated key elements of New Zealand's guardianship model (the legal personhood model described in chapter 1).

The judges in each case justified their extraordinary rulings by citing the need to address serious problems of environmental degradation that had long been known and acknowledged by governments but were effectively ignored. After repeatedly ordering governments to clean up the rivers, courts took the extra step of recognizing rivers' rights only after governments repeatedly failed to act.

Despite citing international precedent, the judges rooted their decisions in domestic laws, even though these did not explicitly recognize RoN. In both Colombia and India, judges strategically interpreted constitutional provisions and other domestic laws to justify the granting of legal personhood status to rivers. In Colombia, Judge Palacio drew on biodiversity, cultural, and humanitarian guarantees in the Colombian Constitution to argue that the rights of the peoples of the Chocó region are intertwined with the rights of the Atrato River, thus necessitating both biological and cultural rights. In India, HCU judges based their ruling on the spiritual significance of the Ganga and Yamuna Rivers to Hindus and cited as precedent previous court rulings establishing legal personhood status for Hindu deities and idols. The HCU also cited constitutional provisions requiring the state to protect and improve the environment. Citing extreme neglect by the state, the court invoked the in loco parentis doctrine to appoint court-mandated guardians, much like a court might do in cases of child abuse.

While both drew on New Zealand's model, the Colombian and Indian rulings structure guardianship differently. Civil society and community groups play an influential role in the Atrato River's guardianship body, occupying seven of the eight positions. As in New Zealand, the state is represented in the guardianship body but is balanced with civil society participation. Moreover, participation in the guardianship body is voluntary, with stakeholder organizations selecting the individuals to represent them. By contrast, the Ganga's guardianship body is comprised only of state representatives who were mandated to serve as "legal parents" by the court. This situation is problematic given the Indian government's poor record of protecting the river.

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Attempts by the Ganga's legal guardians to overturn the HCU ruling reveal several dilemmas not previously contemplated by most RoN advocates.[5] What happens if guardians do not discharge their duties? Should there be an oversight system that penalizes negligent guardians? Until recently, people generally assumed that appointed guardians would be willing to protect Nature's interests. The Indian case shows this may not always be the case. Provisions for dealing with this may need to be built into future RoN laws that follow the legal personhood model.

A 2018 ruling by the HCU shows how the court's judges learned from the Ganga case and are experimenting with different ways to structure guardianship arrangements. On April 7, 2018, the HCU issued another ruling recognizing the RoN in regard to a separate writ petition, this one protesting the abuse of horses used to transport cargo from Nepal to India (High Court of Uttarakhand at Nainital 2018). In this ruling the court recognized rights for the entire animal kingdom. Like its ruling for the Ganga and Yamuna Rivers, the court recognized all members of the animal kingdom as legal persons with all the rights, duties, and liabilities of a legal person. Yet this judgment mandated a different guardianship arrangement than that proposed in its disputed ruling for the Ganga and Yamuna Rivers.

Notably, the HCU again invoked the doctrine of in loco parentis to order court-appointed guardians for the entire animal kingdom rather than having guardians be voluntarily nominated by different stakeholder groups. Instead of appointing state officials, the court appointed all citizens as guardians, somewhat similar to the Nature's rights model used in Ecuador. This choice makes sense given the previous experience with state officials rejecting their status as guardians, and the collective-action problem inherent in naming all citizens as guardians. It may be that the court saw this collective-action problem as an advantage in this case, since it would reduce the likelihood that the appointed guardians would appeal the ruling. Since everyone is a guardian, the obligation to speak for Nature is broadly diffused, reducing individual accountability and thus the incentive of individual citizens to appeal the ruling. By allowing anyone to speak for Nature rather than appointing specific guardians, the ruling resembles Ecuador's model, and shows how experimentation and adaptation is leading to the blending of the Nature's rights and legal personhood models.

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Yet none of the Indian cases resolve a dilemma inherent in the legal personhood model: that legal personhood status extends human rights and liabilities to natural ecosystems. The idea that rivers could be held liable for damage caused through their natural cycles is something that has largely been ignored by RoN activists but is a topic at the center of the legal dispute in India. This is largely due to the legal doctrine used to appoint guardians of the rivers. The in loco parentis doctrine is regularly used to appoint "legal parents" to people who are incapable of caring for themselves and makes the guardians responsible for such people. It also forces them to assume any liabilities incurred by their charges. When applied to rivers, this may suggest that rivers' guardians may be liable for damages incurred to people and their property by the river. While this is clearly not something RoN advocates have wanted to focus on, it is something that will have to be addressed if the guardianship model for legalizing RoN is to be implemented and copied. We will consider this issue further in the Conclusion.

Finally, the case comparisons highlight the importance of combining guardianship with collaborative integrated management systems, an issue that chapter 6 addressed in detail. The legal provisions recognizing the Ganga and Whanganui Rivers as legal persons do not explicitly delineate a set of rights. Rather, they provide legal standing for the rivers to defend their interests. While the rivers can respond to violations by going to court, it is more efficient to create governance arrangements that allow the rivers to proactively address and regulate activities that affect their well-being. For this reason, a crucial aspect of the Colombian and New Zealand systems is the involvement of multiple sets of people from different backgrounds on formal bodies created to address issues relating to the rivers' well-being in an integrated fashion. As Ashish Kothari and Shrishtee Bajpai note, this greatly strengthens the ability of the guardians "to understand complex issues, to withstand pressure to compromise the river's interests, or reach resolution in the case of disputes" (2017, 105). This kind of collaborative, integrated watershed management body was not part of the HCU order. But it could potentially be added "as the operational aspects of the order are worked out" via the Supreme Court's review (Kothari and Bajpai 2017, 105).

In the end, guardianship models are only as good as the power and resources given to them, and "the capacity and freedom to use those

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powers in the particular legal, social, and economic context in which they operate" (O'Donnell 2019, 215). It remains to be seen whether Indian authorities can revise the guardianship arrangement in a way that resolves the dilemmas described in this chapter, and whether Colombia's guardians for the Atrato River can overcome the deep tensions of their region. Both will be necessary to create new pathways toward more sustainable development.

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CONCLUSION: EARTH JURISPRUDENCE FOR A SUSTAINABLE FUTURE FOR ALL

As we write in September 2020, the entire Western US is being ravaged by catastrophic wildfires. This comes mere months after fires burned more than 38,000 sq mi in Australia, covering virtually all parts of the continent. While bush fires are common each year, scientists with the Australian Bureau of Meteorology say the blazes are fueled by warmer temperatures associated with climate change, "increasing the amount of fuel (dried vegetation) available and reducing water availability because of higher evaporation" (Rice 2020). California and Southern Australia have been particularly hard hit, and this is no coincidence: both have already warmed at least 1.5 degrees Celsius in the last century, the level of warming at which climate scientists have long said we should expect to see more destructive effects of climate change (Intergovernmental Panel on Climate Change 2018; Rice 2020).

With average global warming already surpassing 1 degree Celsius above preindustrial levels, scientific reports documenting the onset of climate change and extreme biodiversity loss have become almost routine. They regularly call for a rapid transformation of human economic, energy, legal, and governance systems to avoid environmental, economic, and social crises that will undoubtedly threaten human well-being if left unchecked (see, e.g., Díaz et al. 2019; and Intergovernmental Panel on Climate Change 2018). This is the context for the United Nations (UN)

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General Assembly Resolution A/RES/70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, which calls for "bold and transformative steps that are urgently needed to shift the world to a sustainable and resilient path" (United Nations General Assembly 2015b, 1).

The chapters in this book have shown how people from all walks of life—community and Indigenous activists, lawyers, scientists, government officials, and everyday mothers and fathers concerned about their children's well-being—are working to make the necessary bold transformations where they live. Drawing on Indigenous knowledge, ecological science, or both, the people in our book recognized that a transformation to ecologically sustainable development would require adjusting human systems to be consistent with the scientific laws governing how natural ecosystems function—that is, to live in harmony with Nature rather than constantly battling it and trying to dominate it. This includes changing legal systems to recognize that humans are part of the ecosystems that provide the conditions for human well-being rather than treating humans as separate and distinct from Nature. From Santa Monica, California, to New Zealand, to Zimbabwe, communities are transforming governance systems to manage ecosystems in an integrated fashion, prioritizing continued ecosystem functioning and long-term human well-being over maximizing short-term consumption or profit. Legal systems across the world are being transformed to prohibit activities that would destroy ecosystems' ability to function and to require ecosystems to be restored when damaged so that humans and other species can continue to benefit from them. These people are experimenting with new ways to institutionalize Earth jurisprudence to produce a more ecologically sustainable development.

Throughout the book we have shown how people took inspiration from a relatively vague Earth jurisprudence norm circulating internationally in the early 2000s. The resulting Rights of Nature (RoN) legal provisions emerged through very different pathways, however, owing to different local conditions (as detailed in chapter 3). Consequently, they produced very different models of what RoN looks like in practice. But this is not a simple story of local adaptation of global metanorms; it is a story of how a global RoN norm is being constructed through practice, contestation, and adaptation at the local, national, and international levels, with events at each level

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informing those at other levels through a process of multidirectional influence. Together they are shaping the global construction of RoN and, more important, global contestation over how sustainable development should be conceptualized and practiced.

THE UNIQUE TRAJECTORY OF RON AND EARTH JURISPRUDENCE NORMS

The saliency of RoN and Earth jurisprudence norms has increased dramatically over the last fifteen years. By January 2021 there were at least 215 existing or pending RoN legal provisions in twenty-seven countries. A growing number of courts are recognizing RoN, as are international treaty documents. Most recently, the "Zero Draft of the Post-2020 Global Biodiversity Framework," created for the 2020 Conference of Parties of the UN Convention on Biological Diversity, calls for members to "consider and recognize, where appropriate, the rights of Nature" (United Nations Environment Program 2020). To be sure, RoN remains a relatively weak norm. Nevertheless, it has emerged as a salient counternorm to the dominant development norm that views humans as separate from Nature, views everything in Nature as human property that people can use as they wish, and sees the paramount goal of society as limitless growth in consumption and production.

In terms of theory, the rise of RoN is interesting because it follows a different trajectory from other norms, particularly neoliberal norms like human rights. Unlike traditional models of norm diffusion (see chapter 1), RoN and Earth jurisprudence norms challenge the dominant paradigm of powerful Western states and advocate an alternative paradigm that decenters the state. RoN's rise started as a bottom-up process with characteristics of convergent evolution (as discussed in chapter 1) and has gained saliency internationally due to the formation of a large transnational network that is simultaneously advocating for RoN in a wide variety of policy arenas at different levels of government (local, national, and international). This has produced a multidirectional process of norm construction.

Ecuador's experience is illustrative. RoN has advanced more rapidly in Ecuador than in other countries or in international forums. Strong

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international RoN laws and norms are not yet available to domestic activists seeking to pressure the state to abandon its extractivist development agenda through the classic "boomerang" approach (Risse, Ropp, and Sikkink 1999). As we discuss in chapter 5, this is a key reason Bolivian RoN activists chose to instead frame their struggle in terms of Indigenous rights, which have the force of international law. This is also why Ecuadorian RoN activists are at the forefront of global efforts to establish RoN in international law. Ecuadorian activists are in the unique situation of using RoN as a tool domestically and advancing it as an emerging norm globally. This book has shown that they have had some limited success in both areas.

Together the book's cases demonstrate a dynamic process of interaction and experimentation with applying a nascent global RoN norm to distinct contexts and within unique structures at differing governing levels. As Global Alliance for the Rights of Nature members work with allies and constituents across the world—as the Earth Law Center is doing in Santa Monica, El Salvador, and elsewhere; as the Community Environmental Legal Defense Fund is doing with dozens of US communities; as the Gaia Foundation is doing with local members of the African Earth Jurisprudence Network; as Movement Rights is doing with the Ponca Nation and others; and as Nature's Rights is doing with partners in the European Union—they gather lessons from local experiments and share information and strategies at the global level. Strategies for successful implementation in varying local contexts have been critical learning tools. This is illustrated by the way Grant Township, Pennsylvania's move to adopt a home rule charter influenced the strategies of RoN activists in nearby Highland Township, and how the Whanganui River settlement process in New Zealand influenced Indigenous RoN legal provisions in the United States, as well as court rulings in Bangladesh, Colombia, and India.

The normative content of RoN is simultaneously being constructed differently as it is applied in practice in distinct contexts. In part this is due to the distinct kinds of legal provisions being created based on the different legal pathways available to RoN advocates: a constitutional convention in Ecuador, treaty settlements in New Zealand, national legislative debates in Bolivia and Uganda, local ballot initiatives in the United States, tutelae in Colombia,[1] public interest litigation in India, and meetings to persuade officials to incorporate RoN directly into policy, as has

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occurred in Santa Monica, California, and Blue Mountain, Australia. This shows that there is no single best pathway for institutionalizing RoN. Rather, activists use the pathway that presents the best opportunity given local legal and political structures.

Courts have been particularly influential in stimulating the evolution of RoN jurisprudence, and consequently norm construction, particularly when RoN laws are absent. Laws are always subject to interpretation, and the logic judges use to justify their interpretations provides an indirect measure of the saliency of social norms. The fact that judges in multiple countries are interpreting existing laws in new ways to justify recognizing RoN, despite the absence of laws explicitly recognizing it, shows the increased saliency of RoN norms in various countries. But it also partly explains how the normative content of RoN is evolving, as RoN jurisprudence established by courts increasingly combines elements of existing human-centered law with Earth jurisprudence principles. In this Conclusion we discuss in more detail how this is shaping normative debates over how RoN should be structured.

RoN is also being constructed differently because different cultural framings are used to mobilize support in different contexts. Differences are particularly notable between applications in Indigenous and non-Indigenous contexts. RoN framings are also being shaped by the weakness of RoN as an international norm. This helps explain why RoN is increasingly being constructed in a way that frames it as interconnected with human rights, including Indigenous rights, both domestically and internationally. Chapters 4 and 8 show how constitutional courts in Ecuador and Colombia have not only recognized RoN but strengthened its enforcement capacity by using the concept of biocultural rights to frame RoN as necessary in the protection and enforcement of human rights that are recognized domestically and internationally. Chapter 7 shows how tribal nations in North America are making similar arguments about biocultural rights when recognizing RoN in tribal law.

As the number of RoN legal provisions grow and inform one another, this has fueled normative debates at the international level over how RoN should be constructed. One goal of this book is to show what this norm construction process looks like in practice. In this Conclusion we will weigh in on several debates currently facing the global RoN movement

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and policy makers, as well as offer initial lessons regarding implementation, based on our observation of RoN in practice to date.

WHY ARE WE TALKING ABOUT LAWS?

In September 2018 the Global Alliance for the Rights of Nature hosted the International Rights of Nature Symposium in Quito, Ecuador, to commemorate the tenth anniversary of the enactment of the 2008 Constitution of Ecuador, the first constitution in the world to recognize RoN. Hundreds of movement leaders from around the world attended to take stock of the movement, address current debates, and plan next steps. We spoke on a panel that discussed the different ways RoN laws are being structured and offered initial lessons. During the question period, a visibly frustrated Ecuadorian Indigenous leader asked, "Why are we sitting here talking about laws? When is the Western world going to start doing its share to protect Nature?" Noting that 80 percent of the world's remaining biodiversity lies in Indigenous-controlled territory (Raygorodetsky 2018), the man argued that the entire burden cannot be shouldered by Indigenous peoples alone; non-Indigenous peoples need to do their fair share.

We believe the man's second question essentially answers his first. It is precisely because non-Indigenous societies need to significantly change their behaviors that so many environmental lawyers at the symposium were talking about RoN laws. Cormac Cullinan describes law as the DNA of a society. Law determines how societies "define, structure, organize, and reproduce themselves" (2011b, 56). It does this primarily by defining relationships within a society. Laws reflect and reproduce the worldviews, values, and behaviors that societies see as appropriate. Yet, as Pella Thiel and Henrik Hallgren write, "laws are not just passive reflections, but themselves have a profound impact on morals, values and belief systems, the sense of right and wrong. . . . Law in this view is central to the project of changing society; only by transforming law will we be able to transform society" (2018, 64).

Nevertheless, it is worth reflecting on the motivation behind the Indigenous man's question. We have attended dozens of presentations on RoN, and hardly one goes by without an Indigenous person asking why

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we are talking about laws. We understand that while many Indigenous peoples are sympathetic to the goal of transforming human systems to be consistent with Earth jurisprudence, many are skeptical of Western law's ability to bring this transformation. European-based legal systems have been a tool for exploiting Indigenous peoples for centuries, and many Indigenous peoples are understandably skeptical about lawyers' plans to codify Earth jurisprudence principles by enshrining new rights within Western legal systems. The concept of "rights" is a Western legal construct that creates entitlements that have also been used to marginalize Indigenous peoples in the past.

As we emphasized in chapter 1, RoN laws are not themselves the ultimate goal but rather are meant to be a tool for achieving systemic transformation according to Earth jurisprudence principles. When Indigenous people ask "Why are you talking about laws?" they are essentially asking, "If you want to change your systems, why don't you just go ahead and change your systems?" Their concerns are well founded, and they raise another question: Could Earth jurisprudence be put into practice without RoN laws?

CAN EARTH JURISPRUDENCE BE IMPLEMENTED WITHOUT RIGHTS OF NATURE?

The answer is yes, at least in Indigenous societies whose traditional knowledge and practices are consistent with Earth jurisprudence. For these societies, Earth jurisprudence can be implemented by restoring ancestral knowledge and practices. Indigenous customary law and practices are important not just because of cultural tradition but because they have evolved over centuries to effectively maintain human communities' proper role in the interconnected web of life that constitutes the local ecosystems generating the conditions for well-being. They provide examples of what Earth jurisprudence governance systems might look like.

Consequently, some RoN organizations are working to help Indigenous societies restore ancestral knowledge and practices by providing financial, legal, and administrative support and also by working to remove legal obstacles. Not all of these efforts involve creating RoN legal provisions. For example, the Gaia Foundation works with members of the

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African Earth Jurisprudence Network to secure legal protection for sacred natural sites and territories, and the right of Indigenous communities to serve as "custodians" by governing the territory according to customary governance systems (Gaia Foundation, n.d.-c). The first such law in Africa was achieved in Benin in 2012. Benin's Sacred Forest Law empowers Indigenous communities to govern forests they consider sacred according to "customary governance systems, based on Earth's laws, as part of Africa's plural legal systems" (Gaia Foundation, n.d.-a).

The point is that when implementing Earth jurisprudence is seen as recovering Indigenous customary governance systems, an important piece of this process is providing legal protection for these governance systems—removing the existing Western legal and governance systems to make space for the restoration of ancestral knowledge and practices consistent with Earth jurisprudence. One way to do this is to recognize RoN in law, as was done in New Zealand's 2014 Te Urewera Act and Uganda's 2019 National Environment Act. But another way is to pass laws that directly protect ancestral customary law, like Benin's 2012 Sacred Forest Law.

WHAT IS THE PURPOSE OF RECOGNIZING RIGHTS OF NATURE IN LAW?

The foregoing discussion suggests that the purpose of RoN legal provisions may be different in Indigenous and non-Indigenous societies. RoN legal provisions are meant to be a tool for transforming paradigms (and consequently legal, socioeconomic, and governance systems), particularly in non-Indigenous societies. But for some Indigenous peoples, the utility is merely to remove legal obstacles to recovering ancestral knowledge and practices. While RoN is a foreign concept to many Indigenous groups, the Te Urewera case illustrates how RoN laws can be compatible with Indigenous rights, like self-determination and preservation of culture, when they are used to create legal space for recovering Indigenous customs and values consistent with the principles of Earth jurisprudence. By removing Te Urewera from the existing environmental management legal system and empowering the Tūhoe iwi to retake their traditional place as *kaitiaki*, or Te Urewera's guardians, the Te Urewera Act created a legal space for the

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Tūhoe to restore their self-determination (*mana motuhake*) and begin the long process of recovering ancestral knowledge, customs, and practices to reconnect their people to the land.

But what is the purpose of RoN laws in non-Indigenous societies, where implementing Earth jurisprudence does not involve recovering ancestral knowledge but instead radically transforming systems according to a fundamentally different paradigm? If law is the DNA of these societies, the idea is to "reprogram" the societies to operate according to the new paradigm. Existing law operates as "a system of relationships among sovereign individuals who exercise their sovereignty over private property, which is seen as an extension of themselves" (Ito 2019, 22). Legally, this sovereignty can only be limited by other subjects with similar formal rights. Consequently, the strategy is to recognize ecosystems as subjects with rights, forcing economic rights to be balanced against ecosystems' rights to exist and function, and in the process transforming the law's paradigm regarding humans' relationship to Nature.

Assuming this strategy is possible, how should RoN laws be structured to best achieve this paradigm transformation? This is currently an important debate within the RoN movement. It tends to be framed in terms of the pros and cons of legal personhood for Nature.

THE PROBLEM WITH STRUCTURING RIGHTS OF NATURE AS LEGAL PERSONHOOD

Arguably the most important difference between the Nature's rights model and legal personhood model is that the former recognizes ecosystems as possessing unique rights, while the latter extends human rights to ecosystems. It is worth reiterating how these differences emerged. New Zealand's pioneering legal personhood provisions were modeled on the concept of "legal fiction"—the practice of legally treating nonhuman entities as if they were human (i.e., extending human rights to nonhuman entities). Following the New Zealand laws, courts in Bangladesh, Colombia, and India issued rulings recognizing various ecosystems (e.g., rivers, the Amazon basin, the Himalayan mountain range) as legal persons despite the fact that these countries had no RoN laws. Citing the New Zealand laws, these courts

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interpreted existing laws regarding environmental protection and human rights to justify extending legal personhood to ecosystems.

In the absence of laws recognizing distinct substantive rights for ecosystems, the courts simply extended some of the same rights possessed by human beings (legal personhood) to ecosystems, fitting RoN into the existing human-centered legal framework. This has caused the jurisprudence underlying RoN to evolve in a way that many scholars and advocates find problematic (see, e.g., Grear 2019; Margil 2019; and O'Donnell 2019).

Because legal personhood is already established in law, and has a long history of being applied to nonhuman entities, like corporations and ships, it is more easily transferable from one legal system to another. This has no doubt facilitated the rapid proliferation of RoN legal provisions. But legal personhood establishes RoN stripped of Earth jurisprudence content. We argue that this is problematic, and potentially counterproductive, both for achieving RoN advocates' goal of system transformation and for environmental protection more generally.

First, the language and conceptual framing of legal personhood distorts the relationship between humans and other members of biotic communities identified by Earth jurisprudence and ecological science. It anthropomorphizes ecosystems in a way that reproduces the disconnect between human law and the laws governing the natural world, re-creating the problems that plague conventional environmental law (as discussed in chapter 1). This can be seen through the Indian court ruling granting legal personhood to the Ganga (or Ganges) and Yamuna Rivers (as detailed in chapter 8).

While no doubt well intentioned, the use of the in loco parentis legal doctrine to establish a guardianship mechanism illustrates the problem of inserting RoN into existing anthropocentric legal frameworks. It frames humans as the powerful parent and Nature as the helpless child. This notion of legal guardianship is appropriate among humans, but violates fundamental Earth jurisprudence principles when applied to the human-Nature relationship. Nature knows better than humans how its ecosystems should function and evolve. And given that Nature provides the conditions needed to sustain human life, Nature is better understood as the parent in such a relationship.

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From the Earth jurisprudence perspective, guardianship is not about managing Nature like a parent would manage a child but rather about guarding the relationship between humans and other members of the biotic community.[2] The goal is managing human behavior to maintain balance so that the ecosystem on which all members (including humans) rely for their well-being continues to function. The Santa Monica and Te Urewera cases provide examples of what this looks like in Indigenous and non-Indigenous contexts. By distorting this understanding of what guardianship is about, legal personhood undermines the goal of normative and system transformation at the heart of the RoN project.

A second problem with legal personhood is that it creates legal liabilities for ecosystems. This has already produced perverse incentives, including those in the Indian court rulings outlined in chapter 8. The idea that ecosystems have the same responsibilities to humans that humans have toward each other is absurd. We cannot hold a river liable for flooding, or hold the climate accountable for damage caused by sea level rise. Holding ecosystems accountable to human law merely reproduces the misguided idea that humans can bend the laws of Nature to their will. But as Bill McKibben (2017) notes, "physics doesn't do compromise."

The fact that ecosystems do not bear human responsibilities does not mean that they should not have rights. It just means that we should not extend human rights and responsibilities to Nature. Because each member of a biotic community plays a unique role in maintaining the functioning of an ecosystem, each member has unique responsibilities to the whole community and, in turn, unique rights. Consequently, RoN laws should be structured in a way that recognizes different elements of Nature as having distinct substantive rights. To paraphrase Christopher Stone (1972) and Thomas Berry (2001), trees should have tree rights, rivers should have river rights, fish should have fish rights, humans should have human rights, and ecosystems should have ecosystem rights. As Berry (2001) notes, "The difference is qualitative, not quantitative."

Beyond philosophical arguments, there is evidence that granting legal personhood to ecosystems without recognizing their own substantive rights can undermine societal values favoring environmental protection. Erin O'Donnell (2019) examines the historical performance of

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environmental water managers (EWMs), created in the mid-1990s, as a proxy for studying the effect of legal personhood for rivers. EWMs are organizations with legal personhood status that manage water for environmental benefit. They have essentially the same legal form as rivers with legal personhood status represented by human guardians. O'Donnell finds that in many cases EWMs created new cultural narratives that framed river ecosystems as just another water user competing with other water users for water resources—"a mere participant in the water market" (2019, 7). Legal personhood anthropomorphized ecosystems in a way that stripped them of their status as worthy of protection. Framed as a competitor in water markets, humans began to see Nature as a legal entity that could (and should) protect itself and thus no longer required human protection. O'Donnell shows that in some cases this produced a weakening of statutory environmental protections.

O'Donnell (2019) acknowledges that legal personhood has worked better in places like New Zealand, where ecosystems (represented by their guardians) are inserted into collaborative integrated ecosystem management bodies that operate according to Indigenous cultural values rather than the logic of market competition. Regardless, her study provides a cautionary tale of the perverse outcomes that are often produced by recognizing RoN in the form of legal personhood divorced from Earth jurisprudence.

The key point is that if the goal is transforming systems to be more ecologically sustainable—changing the DNA of Western legal systems and society—then it is essential that RoN not be stripped of Earth jurisprudence content. Adapting RoN legal provisions to fit within existing anthropocentric legal and socioeconomic systems will at best be meaningless and will at worst produce perverse outcomes. Legal personhood for ecosystems might work when this is accompanied by new governance institutions that manage ecosystems according to Indigenous cultural values or other principles that are consistent with Earth jurisprudence, as happened in Colombia and New Zealand. But otherwise, the transformative potential of RoN likely requires legal provisions recognizing Nature as possessing unique substantive rights, and humans possessing responsibilities toward Nature.

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EARTH JURISPRUDENCE AND CHANGING CONCEPTIONS OF SUSTAINABLE DEVELOPMENT

Increasing recognition of RoN (and Earth jurisprudence generally) in multiple domestic and international policy arenas is combining with growing awareness of the twin crises of climate change and biodiversity loss to reshape debates about how sustainable development should be conceptualized and practiced. While the term sustainable development has been used for about fifty years, its meaning has changed, particularly with the advent of the UN's Agenda 2030 and scientific understandings of the Anthropocene era.

The 1972 UN Conference on the Human Environment in Stockholm acknowledged the interlinking of economic growth and development, emphasizing the human centrality of our system. That same year, the book *Limits to Growth* (Meadows, et al 1972) introduced our world to systems-level thinking and highlighted the vast interconnectedness of our planetary limits, our economic system, and our societal way of life. Following that, in 1987, the Brundtland Commission coined the term *sustainable development* and entered it into our international vernacular and policy frameworks. The definition of the term then was "development that meets the needs of the present without compromising the ability of future generations to meet their own needs" (Brundtland 1987, 41).

The urgency of recent intergovernmental scientific reports showing the onset of climate change and mass extinction through biodiversity loss (e.g., Díaz et al. 2019; and Intergovernmental Panel on Climate Change 2018) and scientists' collective recognition of those impacts on a new era—the Anthropocene—have moved the international community away from a definition centered on human systems and exponential economic growth to one that recognizes an integrated set of "three pillars" of sustainable development (economic, social, and environmental) in the Agenda 2030 resolution (UN General Assembly 2015b). This shift began in 2002 at the UN World Summit on Sustainable Development in Johannesburg and expanded at the UN Conference on Sustainable Development (Rio+20), resulting in the *Resolution Adopted by the General Assembly on 27 July 2012: The Future We Want*. Built on knowledge of our changing planet and a systems-based holistic view of our future, the Rio +20 document expands

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the meaning of sustainable development to "promoting sustained, inclusive and equitable economic growth, creating greater opportunities for all, reducing inequalities, raising basic standards of living; fostering equitable social development and inclusion; and promoting integrated and sustainable management of natural resources and ecosystems that supports inter alia economic, social and human development, while facilitating ecosystem conservation, regeneration, and restoration and resilience in the face of new and emerging challenges" (UN General Assembly 2012b, para. 4).

Given the complexity of global environmental challenges like climate change and sustainable development, scholars and policy makers are increasingly calling for governance systems to be transformed to manage people and natural resources in an integrated way, recognizing the interlinkages among all elements of ecosystems, including human communities (Bleischwitz et al. 2018). Jeffrey Sachs notes that in addition to the social, economic, and environmental interlinkages, good governance—defined as "the rules of behavior"—is the foundation for sustainable development, and critical for achieving the UN's Sustainable Development Goals (Sacha 2015, 7, 502). Herein lies the importance of Earth jurisprudence; it encompasses the two key elements of sustainable development that Sachs outlines: (1) the normative and ethical, as well as (2) the scientific and analytical (Sachs 2015, preface). It provides a holistic framework for creating rules systems that integrate the social, economic, and environmental elements of the planet while balancing these three areas in a way that is better positioned to achieve ecological sustainability—that is, sustainable development in harmony with Nature.

Sachs further notes that one size doesn't fit all in governance types. We, too, have found that Earth jurisprudence through RoN legal provisions comes in all shapes and sizes as a result of adaptation and experimentation. This book's cases identify multiple pathways for institutionalizing RoN and Earth jurisprudence systems that move the planet toward new forms of holistic governance for sustainable development capable of meeting the 2030 goals.

The need to create legal and governance systems that account for the interlinkages among the economic, social, and environmental spheres highlights the importance of not only recognizing RoN but embedding

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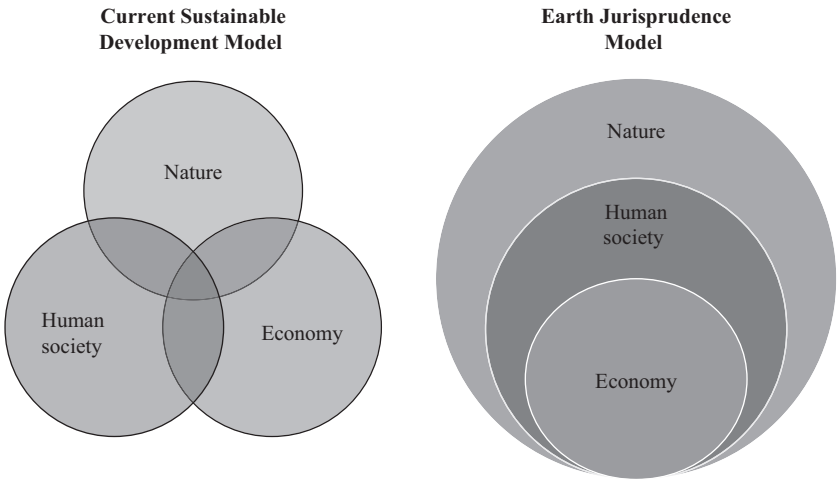
it in new, integrated ecosystem-level governance bodies. We argue that this book's case studies suggest it is much more efficient and effective to enforce RoN proactively by integrating RoN and Earth jurisprudence principles into decision-making processes rather than trying to protect them retroactively through the courts.

If true sustainability requires integrated governance that recognizes social, economic, and environmental interlinkages, and we take Earth jurisprudence seriously, then we need to reconceptualize the sustainable development model. The current sustainable development model views the three pillars of sustainability as distinct spheres that operate independently, represented by a Venn diagram with sustainability marked by the tiny area where the three spheres overlap (see figure 9.1). This reproduces the mistaken mechanistic worldview reflected in Western legal systems (discussed in chapter 1). Mumta Ito notes that "in reality the only circle that can operate independently is Nature, as the others are dependent on Nature for their existence" (2020, 324). Human societies cannot exist without Nature providing the conditions for life. Economic systems are social constructions and cannot exist without functioning societies. Consequently, a more accurate portrayal of the relationship linking Nature,



9.1 The relationship of natural, human, and economic systems.
Source: Adapted from Ito 2020, 324.

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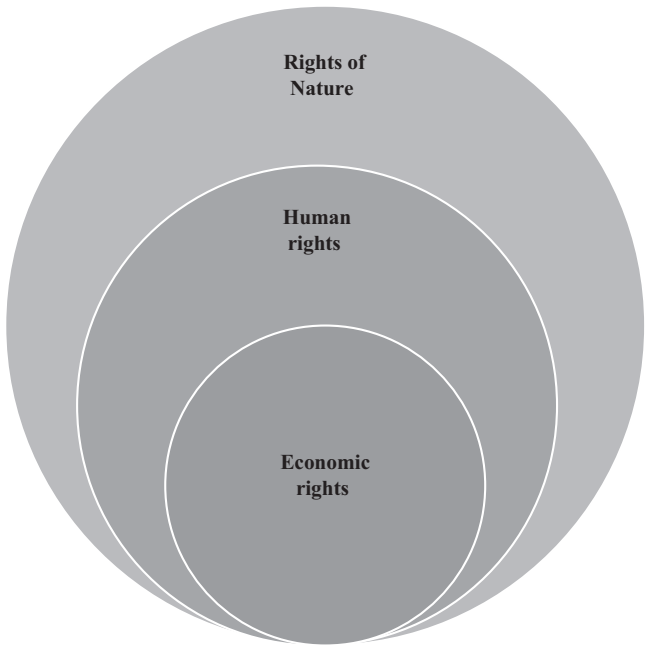
human society, and the economy is one of nested systems with a natural hierarchy (Ito 2020, 324).

THE RELATIONSHIPS AMONG RIGHTS OF NATURE, HUMAN RIGHTS, AND ECONOMIC RIGHTS

From the Earth jurisprudence perspective, this natural hierarchy of systems requires rethinking the relationship among the pillars of sustainable development in a way that suggests a natural hierarchy of rights (see figure 9.2). As Ito notes, "The rights operate in synergy with each other, as competing rights would undermine the well-being and integrity of the whole. This model of nested rights brings a unifying overarching framework to the balancing of interests and weighing of divergent values, overcoming the existing fragmentation and imbalance. Economic rights that currently undermine human rights and Nature's rights destabilize the



9.2 The hierarchy of rights.
Source: Adapted from Ito 2020, 325.

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whole system, and would no longer be in the public interest" (2020, 325). The implication is that achieving ecologically sustainable development requires transforming legal, socioeconomic, and governance systems to reflect a hierarchy of rights that reflects the natural order of the world.

A small but growing number of domestic and international courts are beginning to address the relationship between RoN and human rights, with rulings recognizing the Earth jurisprudence paradigm shown in figure 9.1. When thinking about the relationship between RoN and human rights, it is useful to distinguish between three kinds of human rights: environmental rights, sociocultural rights (such as Indigenous rights), and economic rights.

Regarding environmental rights, chapter 1 describes the Supreme Court of Justice of Colombia's decision recognizing the rights of Colombia's Amazon rain forest as a necessary step to protect human environmental and intergenerational rights. This idea is also reflected in court rulings recognizing the rights of rivers in Bangladesh and India, as well as dozens of RoN laws around the world.

The Inter-American Court of Human Rights similarly issued a finding recognizing that protecting RoN is important not only for protecting the Earth's biodiversity but also for protecting the human right to a healthy environment. Acknowledging "the existence of an irrefutable relationship between the protection of the environment and the realization of other human rights," the court emphasized "the interdependence and indivisibility between human rights, the environment and sustainable development, since the full enjoyment of all human rights depends on a favorable environment." Acknowledging the Earth jurisprudence paradigm, the court further stressed that "the right to a healthy environment . . . concerns protecting Nature and the environment not only in connection to their usefulness to human beings or due to the effects that their degradation may have on the rights of persons . . . but because of their importance to all other living organisms with whom the planet is shared, and who merit protection in their own right. In this regard, the Court notes a tendency to recognize legal personhood and, therefore, rights for Nature not only in judicial sentences but even in constitutional systems" (Inter-American Court of Human Rights 2017b).

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As we have acknowledged, the relationship between RoN and Indigenous rights is complicated. Nevertheless, Indigenous groups across Europe, Latin America, North America, and New Zealand have used RoN to insert their traditional worldviews regarding the human-Nature relationship into Western legal frameworks.[3] Chapter 4 describes how several Ecuadorian Indigenous groups have begun to link RoN and Indigenous rights in lawsuits and how this has facilitated the evolution of jurisprudence seeing RoN, environmental rights, and sociocultural rights as intertwined to form a set of biocultural rights. Biocultural rights arguments have been used to support RoN by courts in Ecuador (chapter 4) and Colombia (chapter 8), as well as by tribal nations in the United States (chapter 7).

The relationship between RoN and economic rights is perhaps the most contentious issue, and lays bare the difference between the conventional sustainable development paradigm and one based on Earth jurisprudence. To date, this has only been initially addressed by Ecuadorian courts, and solely within Ecuador. Lower-level courts have ruled that RoN take precedence over economic rights, but the Constitutional Court of Ecuador has a number of cases pending at the time of this writing in which it plans to set jurisprudence on this matter. Meanwhile, other countries, like Bolivia, are subsuming RoN under economic rights.

The argument that ecosystems should not be conceptualized as property has led some (including both advocates and critics of RoN) to question whether RoN is compatible with the existence of markets and property rights. We believe the failure to address this question poses an important obstacle to the system transformation needed to address pressing environmental crises. Confusion over this issue makes it hard for people who might be sympathetic to RoN to envision what an economic system based on Earth jurisprudence would look like. For this reason, we offer some thoughts on why RoN does not mean an end to markets, as some critics fear.

ARE MARKETS AND PROPERTY RIGHTS COMPATIBLE WITH RIGHTS OF NATURE?

As figure 9.2 suggests, implementing RoN does not mean an end to economic rights (such as property rights) or markets in which to exchange

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commodities. It just means economic rights are bound by higher-order social rights and RoN. Not everything in Nature would be privatized and commodified, and people would no longer have the right to destroy ecosystems, but property rights and market exchange would continue.

The main difference is that the subjects of market transactions and their relationships would change. People would still take from Nature things they need to live (e.g., air, water, food, energy, medicine, building materials, etc.). But this would be seen as one part of a reciprocal transaction between humans and ecosystems as equal legal subjects, each with responsibilities to the other. Nature's responsibility to humans is to provide the conditions for life. But the reciprocal relationship that comes with RoN means that people also have obligations to Nature as part of this transaction. They have to restore any damage done to the ecosystem as part of the market transaction (as ecosystems don't accept cash payment). And people cannot exploit the ecosystem to the point that it is permanently damaged or altered.

The fact that existing RoN laws recognize ecosystems as being able to possess property shows that RoN does not make property obsolete. While it may sound odd to think of rivers (understood as watershed ecosystems) holding water rights and selling water as property, this is conceptually no different from people selling their blood to blood banks. Legally, people are individuals. We recognize that people's bodies are not simply stocks of individual resources, but rather a collection of eleven interdependent systems. People are more than the sum of their parts; all of the body's systems must be functioning together for a person to live. In this sense people are very much like ecosystems. A blood bank may withdraw a limited amount of blood from a person's system and buy it to use as it wishes. In this instance, the blood is treated as property that is bought and sold (much like a river's water might be). The blood (water) is not the legal person; the human being (river ecosystem) is. The human being is more than just his or her blood, just as a river ecosystem is more than just its water.

Because people are legal persons with rights, there is a limit to how much of a person's blood a blood bank can withdraw. It cannot withdraw so much that the person's systems stop functioning, causing death. If this happened, representatives of the blood bank would likely be charged with

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murder. Moreover, most blood banks will typically give blood donors a glass of orange juice or something else rich in folic acid to replenish fluids and create new red blood cells in the body. There is a recognition of the obligation to help restore the donors' systems after inflicting some harm. The same logic applies in the case of ecosystems like rivers. RoN does not mean that humans cannot still benefit from ecosystems, including impacting them in ways that inflict limited harm. It means that humans have the obligation to restore the health of the ecosystem, and people would be legally prohibited from inflicting such harm that it prevents the ecosystem's systems from functioning and regenerating. This is what it means to recognize that economic systems are embedded in human social systems, which are embedded in ecosystems.

In sum, there is plenty of space for economic activity and markets within a RoN framework. But it would look more like a circular economy (Schroeder, Anggraeni, and Weber 2018) rooted in zero-growth economics (Farley 2012) than today's economy based on infinite exponential growth in consumption and production.

STRATEGIES FOR IMPLEMENTING EARTH JURISPRUDENCE TO MEET THE 2030 SUSTAINABLE DEVELOPMENT GOALS

While the number of RoN legal provisions is steadily increasing, and RoN norms are becoming more salient in international policy arenas, Earth jurisprudence is not yet strongly incorporated into international law. This raises the question of how Earth jurisprudence generally (and RoN specifically) might be incorporated into international legal frameworks regarding sustainable development.

We argue that it will likely be easier to incorporate Earth jurisprudence into existing international legal frameworks rather than to create fundamentally new ones. If so, we believe existing international legal frameworks linking Indigenous rights, the environment, and development provide a pathway for doing so. This is true for several reasons. First, as noted throughout this book, Indigenous and environmental rights are being linked to RoN through the concept of biocultural rights in both domestic and international law. Second, Indigenous knowledge and governance models recognizing humans as part of Nature have been

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fundamental in recent efforts to expand the concept of rights beyond humans to include all living things. Third, just as Indigenous movements have successfully bridged local struggles for rights in their own countries with global struggles for those rights, RoN activists need to bridge local struggles with an international effort capable of tackling global environmental threats. For all these reasons we argue that recognition of Indigenous knowledge and practices in international law may provide a pathway for strengthening Earth jurisprudence within the international system, particularly regarding the UN's Agenda 2030, just as biocultural rights arguments have done in domestic law.

The UN Declaration on the Rights of Indigenous Peoples, for example, recognizes a "respect for Indigenous knowledge, cultures, and traditional practices [that] contribute to sustainable and equitable development and proper management of the environment." It also recognizes that rights are not just held by individuals, but rather communities possess collective rights that "are indispensable for their existence, well-being and integral development as peoples" (United Nations General Assembly 2007, 2, 3). This is relevant to Earth jurisprudence because RoN is similarly a form of collective rights, possessed by communities of all beings (including humans) united by their interdependence as members of a common ecosystem (sometimes referred to as biotic communities).

Earth jurisprudence principles are similarly reflected in Agenda 2030, which recognizes the interlinkages of living beings and our ecosystems. For example, the agenda defines prosperity as: "ensur[ing] that all human beings can enjoy prosperous and fulfilling lives and that economic, social and technological progress occurs in harmony with Nature" (United Nations General Assembly. 2015b, 2). Agenda 2030 mentions the significance of Indigenous peoples various times and includes a section on recognizing their contributions within state and subnational systems. To achieve a prosperous future in harmony with Nature, RoN advocates may learn from Indigenous peoples who provide models for bridging the local-global and Nature-human gaps in our legal and governance systems.

Article 31 of the Declaration on the Rights of Indigenous Peoples states that Indigenous peoples "have the right to maintain, control, protect, and develop their cultural heritage, traditional knowledge, and traditional cultural expressions" (United Nations General Assembly 2007, 9).

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The guarantor of these rights should be states, and this illustrates the legal link between Indigenous peoples and states. One challenge facing Indigenous peoples is the need to work both within and outside the state system and to work fluidly across global, national, and local governance platforms to promote policies rooted in traditional wisdom, culture, and their spiritual bonds with their territories. RoN activists face a similar challenge and have much to learn from the experience of Indigenous rights.

The Sarayaku community in Ecuador illustrates how Indigenous peoples engage in multilevel policy making and advocacy called *kawsak sacha* (living forest) that is rooted in their cosmovision regarding their forest territory in the Ecuadorian Amazon. For the Sarayaku, this deep understanding of their relationship to the forest stems from a recognition of the "equality among living things and [a notion of] wealth that is signified by clean air and water, rather than GDP [gross domestic product], cars, and houses" (Santi 2018). The Sarayaku have struggled against oil extraction in their territory at both the local and global levels. They have participated in international forums, such as the International Rights of Nature Symposium in September 2018. They have organized within their tribal communities and with other Indigenous groups in Ecuador.

For decades, Indigenous leaders, like those among the Sarayaku, have exerted agency across local, national, and global levels and worked both inside and outside the system of state sovereignty to assert their rights. Indigenous movements exist "outside of and prior to stateness," and yet use state institutions to gain more authority and sovereignty at national and global levels (Picq 2018a, 123). The same is arguably true for RoN advocates seeking to strengthen Earth jurisprudence.

The very notion of taking tribal understandings of collective rights within biocultural frameworks and transposing these to the global level challenges the basic principles of rational state sovereignty in international relations (Picq 2018a). Notably, this challenge is not unique to Indigenous communities. The same struggle is present in Grant and Highland Townships in Pennsylvania, where citizens adopted home rule charters asserting their community rights (including the rights of communities of Nature) to prevent environmentally destructive activities that threaten their health and well-being. Their assertions of community rights were challenged by the

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Pennsylvania State Department of Environmental Protection, which argues that the state's and corporations' rights to inject wastewater from hydraulic fracturing into the groundwater wells preempts the home rule charters recognizing RoN, and also the townspeople's rights to self-determination.

The pressure on communities to protect the ecosystems on which their well-being depends is pushing them to challenge sovereign state (and subnational) boundaries and to create new legal tools that better reflect the community of Earth. In so doing they are moving toward the goals of Agenda 2030.

CHAPTER SUMMARY

The 2019 UN's Interactive Dialogue of the General Assembly on Harmony with Nature demonstrates a perceptible shift toward recognizing Earth jurisprudence (including RoN) as a pathway toward sustainable development. Members noted the expansion of RoN laws and policies at local and national levels around the world, as well as the myriad civil society and nongovernmental organizations that are advocating RoN and training lawyers and policy makers to implement it (UN General Assembly 2019, 4). Dialogue members discussed new cases of RoN laws and policies from multiple continents—Africa, Europe, and North and South America—and emphasized the significant contributions that these laws play in providing models for holistic approaches to sustainable development within the Western legal system. Commemorating the expansion of RoN over ten years, David Boyd, the UN special rapporteur on human rights and the environment, recommended "three steps to accelerate progress towards a sustainable future: teaching ecological literacy, promoting the right to live in a healthy and sustainable environment, and recognizing the rights of Nature" (United Nations General Assembly 2019, 3–4).

We agree with Boyd and suggest that RoN is not only a tool for implementing ecologically sustainable development but a siren call for all of us—citizens, activists, scholars, policy makers, and business leaders alike. Current science is clear about the serious impacts humans have caused on the planet. Our intellectual history of detaching humans from the ecosystems we need to survive has created siloed disciplines, laws, and policies that encourage an unsustainable future. Our hope is that this book not

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only provides a glimpse of what a world with ecologically sustainable governance systems might look like but shows various pathways through which it can be created.

We also hope that scholars will continue this Earth-centered approach in their disciplines, work across department silos, and venture into communities (as many already do) while encouraging students to do the same. It is with this hopeful sentiment that we seek to help push those boundaries toward an ecologically sustainable development agenda for all living beings and provide new ways of envisioning international relations for all on the planet.

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NOTES

CHAPTER 1

1. For UN reports and regulations regarding RoN, see United Nations Harmony with Nature Programme, n.d.-a.

2. Writings on RoN by norm entrepreneurs from around the world can be found in the anthology *The Rights of Nature* (Council of Canadians 2011).

3. Casey Camp-Horinek, email correspondence with the authors, July 10, 2020.

4. Rooted in Indigenous worldviews, *buen vivir* rejects conventional notions of development based on Western ideals of individualism, a dualism between humankind and Nature, and a linear notion of progress rooted in material growth.

5. New Zealand's 2012 Deed of Settlement with the Tūhoe iwi recognizes the Te Urewera forest as a legal person with rights. This settlement was incorporated into national law through the 2014 Te Urewera Act (New Zealand Parliamentary Counsel Office 2014a).

6. Both authors are members of the UN Harmony with Nature Knowledge Network. For more information, see United Nations Harmony with Nature Programme, n.d.-b.

7. Portions of this and other sections in this chapter are excerpted from Craig M. Kauffman and Pamela L. Martin, "Constructing Rights of Nature Norms in the U.S., Ecuador, and New Zealand," *Global Environmental Politics* 18 (4), 2018, 43–62. Reprinted here with permission.

8. One exception is the Constitutional Court of Colombia's ruling recognizing the Atrato River as a legal person, as detailed in chapter 8.

9. At the time of this writing in early 2020, Uganda was the only other country to recognize RoN in a national law, its National Environment Act 2019 (Republic of Uganda 2019).

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CHAPTER 2

1. All translations throughout the book are by the authors unless otherwise noted.

2. Nobel Prize winner Bertrand Russell created the International War Crimes Tribunal in 1966 to investigate human rights abuses committed against Vietnamese peoples resulting from US military intervention in Vietnam (Duffett 1968). Inspired by the Russell tribunal, law experts and rights activists established the Permanent Peoples' Tribunal to investigate and provide judgments on violations of human rights around the world (Blaser 1992).

3. Breadth is an inverse measure of cohesion. The closer to a score of 0, the more cohesive the network. The closer to a score of 1, the more fragmented the network.

4. State level community rights / RoN organizations exist in Colorado, New Hampshire, New Mexico, Ohio, Oregon, Pennsylvania, and Washington.

5. Regional clustering for all regions was determined by calculating David Krackhardt and Robert Stern's E-I (External-Internal) Index using UCINet software (Krackhardt and Stern 1988).

CHAPTER 3

1. This chapter contains excerpts from Craig M. Kauffman and Pamela L. Martin, "Constructing Rights of Nature Norms in the U.S., Ecuador, and New Zealand," *Global Environmental Politics* 18 (4), 2018, 43–62. Reprinted here with permission.

2. Hydraulic fracturing, or fracking, is a process of injecting water, sand, and chemicals at high pressure into bedrock to extract oil and natural gas (US Geological Society).

3. Ambassador John Wood, interview with Craig Kauffman, Wellington, New Zealand, August 10, 2016; Paul Beverley, Crown lawyer for the Te Awa Tupua and Te Urewera settlements, interview with Craig Kauffman, Wellington, New Zealand, August 19, 2016.

4. Wood interview; Beverley interview.

5. Wood interview.

6. Wood interview.

7. Christopher Finlayson, interview with Craig Kauffman, Wellington, New Zealand, August 11, 2016; Beverley interview; Rachel Houlbrook, member of Crown negotiating team for the Te Awa Tupua and Te Urewera settlements, interview with Craig Kauffman, Wellington, New Zealand, August 10, 2016.

8. Tamati Kruger, lead Tūhoe negotiator for the Te Urewera settlement, interview with Craig Kauffman, Wellington, New Zealand, August 17, 2016.

9. Wood interview.

10. Tamati Kruger and Kirsti Luke, lead Tūhoe negotiators for the Te Urewera settlement, interview with Craig Kauffman, Wellington, New Zealand, August 17, 2016.

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CHAPTER 4

1. This chapter contains excerpts from Craig M. Kauffman and Pamela L. Martin, "Can Rights of Nature Make Development More Sustainable? Why Some Ecuadorian Lawsuits Succeed and Others Fail," *World Development* 92, 2017, 130–142. Reprinted here with permission.

2. A large literature problematizes different interpretations of *buen vivir* and *sumak kawsay*, including the view that these are distinct concepts (see, e.g., Acosta and Martínez 2009; Hidalgo-Capitán, Guillén García, and Déleg Guazha 2014; and Lalander 2014). Describing these different interpretations is beyond the scope of this chapter. While acknowledging the differences, we use the terms as they are typically used in relation to Ecuador's political project of putting *buen vivir* and RoN into practice. We note that some Indigenous activists argue that the Ecuadorian government's treatment of *buen vivir* is inconsistent with the Indigenous concept *sumak kawsay*. They accuse government leaders of co-opting and twisting the concept's meaning to justify a traditional Western development model rooted in resource extraction and increased consumption (see, e.g., Cholango 2010; Oviedo 2014; and Simbaña 2011).

3. Acción Ecológica's legal status was subsequently reinstated amid international pressure.

4. In addition to not considering a secondary RoN law in the National Assembly, the government failed to create the *superintendencia* (autonomous, independent administrative unit) for the environment that was mentioned in the constitution (Patricio Hernandez, Ecuadorian lawyer specializing in RoN, interview with Craig Kauffman, Quito, Ecuador, August 3, 2015). RoN was, however, subsequently supported by the 2014 Penal Code, whose chapter 4 specifies "crimes against nature or Pachamama" (Republic of Ecuador 2014).

5. Natalia Greene, President of CEDENMA, the National Coordinating Entity for Environmental NGO's in Ecuador, interview with Craig Kauffman, Quito, Ecuador, July 30, 2015; Esperanza Martínez, founder of the association Acción Ecológica in Ecuador, interview with Craig Kauffman, Quito, Ecuador, August 7, 2015; Alberto Acosta, Ecuadorian economist and president of Ecuador's Constituent Assembly, interview with Craig Kauffman, Quito, Ecuador, July 31, 2015; Hernandez interview.

6. Hugo Echeverría, Ecuadorian lawyer specializing in RoN, interview with Craig Kauffman, Eugene, Oregon, October 10, 2019.

7. This was confirmed through separate interviews with members of multiple organizations who participated in the drafting of Ecuador's constitutional RoN provisions and who spearheaded efforts to strengthen these provisions after the constitution's signing. Examples include the Greene, Martínez, Acosta, and Hernandez interviews.

8. We are indebted to Hugo Echeverría for this insight.

9. Organizations filing the lawsuit included two Indigenous movements (CONAIE; the Confederación de Nacionalidades Indígenas del Ecuador; and Ecuador Runakunapak

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Rikcharimuy, or ECUARUNARI); two nongovernmental human rights organizations (the Comisión Ecuménica de Derechos Humanos and the Fundación Regional de Asesoria en Derechos Humanos), the nongovernmental environmental organizations Acción Ecológica, Coordinadora Ecuatoriana de Organizaciones para la Defensa de la Naturaleza y el Medio Ambiente (CEDENMA), and Fundación Pachamama; and five individuals representing local communities.

10. The lawsuit cited articles 12, 15, 66.2, 71–74, 276, 282, 396, 406, and 413 of the constitution and articles 10 and 32 of the Organic Law of Jurisdictional Guarantees and Constitutional Control.

11. The Condor-Mirador project covers territory that is in a protected forest but not a protected area. This distinction is important because mining is not legally allowed in protected areas, but it is allowed in protected forests.

12. Hugo Echeverría, interview with Craig Kauffman, Quito, Ecuador, September 17, 2015.

13. *Páramos* are high Andean grasslands that capture and store moisture from the air and regulate the flow of water to lower areas.

14. This prohibition exists in numerous Ministry of Environment regulations. For example, article 8 of the Interministerial Accord No. 002 between the Ministry of Environment and Ministry of Agriculture states that "in sites where the conditions described as *páramos* exist, even when they are in altitudes below 3,500 meters above sea level . . . , forest plantations will not be established." Article 4 of the same accord says that forest plantations for commercial purposes must be established outside of protected areas covered with native *páramo* vegetation (Republic of Ecuador 2013).

15. Pablo Piedra, Ecaudorian lawyer representing Nature in the Tangabana case, interview with Craig Kauffman, Quito, Ecuador, September 18, 2015.

16. Piedra interview.

17. Galapagos National Park officials, interviews with Pamela Martin, San Cristobal, Galapagos, April 2014.

18. This point was repeatedly emphasized in author interviews with leaders of social movements opposing mining and oil development.

19. Yaku Pérez Guartambel (the name Yaku means "water") is a Kichwa-Kañari lawyer who represented the Indigenous communities in the trial. He was also president of ECUARUNARI from 2013 to 2019, and in 2019 was elected the prefect of Azuay Province.

20. Manuela Picq, Professor of International Relations at Universidad San Francisco de Quito, email communication with Pamela Martin, May 2018.

21. Echeverría interview, October 10, 2019.

22. For discussions of the Yasuní-ITT Initiative (which offered a perpetual suspension of oil extraction in the part of Yasuní National Park known as Ishpingo-Tambococha-Tiputini, or ITT), see Martin (2011, 2015).

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CHAPTER 5

1. This fact was confirmed through numerous interviews with lawyers representing groups advocating RoN, including those representing the organizations that drafted Bolivia's Law of the Rights of Mother Earth in 2010.

2. For detailed analysis of this process and competing definitions of decolonization, see Postero 2017.

3. The main organizations of the Unity Pact included three highland campesino movements—the National Confederation of Campesino, Indigenous, and Native Women of Bolivia "Bartolina Sisa" (CSUTCB-BS); the Trade Union Confederation of Intercultural Communities of Bolivia (CSCIB); and the Single Trade Union Confederation of Campesino Workers of Bolivia (CSUTCB)—as well as one highland Indigenous-identified movement, the National Council of Markas and Ayllus of Qullasuyu (CONAMAQ), and one national movement of lowland Indigenous groups, the Confederation of Indigenous Peoples of Bolivia (CIDOB).

4. For UN General Assembly resolutions and reports of the secretaries-general on RoN, see United Nations Harmony with Nature Programme, n.d.-a.

5. Marilín Karayuri, Guaraní journalist who worked on the communications committee of Indigenous marches to protect TIPNIS, interview with Craig Kauffman, Santa Cruz, Bolivia, November 22, 2017; Walter Limache, member of the Unity Pact, interview with Craig Kauffman, La Paz, Bolivia, November 21, 2017; Raúl Prada, advisor to the Unity Pact, interview with Craig Kauffman, La Paz, Bolivia, November 20, 2017.

6. Examples include René Orellana, Minister of Development Planning of Bolivia, interview with Craig Kauffman, La Paz, Bolivia, November 15, 2017; and Alcides Vadillo, Regional Director for Fundación Tierra, interview with Craig Kauffman, Santa Cruz, Bolivia, November 23, 2017.

7. Orellana interview; Diego Pacheco, Deputy Minister of Development Planning, interview with Craig Kauffman, La Paz, Bolivia, November 16, 2017.

8. Among the key brokers were Alejandro Almaraz, Roberto Fernández, Gustavo Guzmán, Aniceto Hinojosa, Jorge Komadina, Pablo Mamani, Marcela Olivera Foronda, Oscar Olivera Foronda, Raúl Prada, Rafael Quispe, Pablo Regalsky, Víctor Hugo Sainz, Gustavo Soto, Leonardo Tamburini, Moisés Torres, and Oscar Vega.

9. Samuel Flores, Permanent Secretary of the Indigenous Court of Justice of the Qhara Qhara Nation, interview with Craig Kauffman, La Paz, Bolivia, November 15, 2017.

10. Patricia Molina, Director General of FOBOMADE, interview with Craig Kauffman, La Paz, Bolivia, November 15, 2017; Rubén Pinto, legal advisor for FOBOMADE, interview with Craig Kauffman, La Paz, Bolivia, November 15, 2017.

11. Molina interview.

12. We are indebted to Nancy Postero and Derrick Hindery for this insight. Nancy Postero, telephone interview with Craig Kauffman, November 3, 2011. This point was confirmed by Rubén Pinto, a lawyer for FOBOMADE, who claimed to be the only lawyer in Bolivia considering a RoN lawsuit; Pinto interview.

13. Vadillo interview.

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CHAPTER 6

1. Portions of this chapter are excerpted from Craig M. Kauffman, "Managing People for the Benefit of the Land: Practicing Earth Jurisprudence in Te Urewera, New Zealand," *ISLE: Interdisciplinary Studies in Literature and Environment* 27 (3), 2020, 578–595, https://doi.org/10.1093/isle/isaa060. Reproduced by permission of Oxford University Press.

2. Tamati Kruger, interview with Craig Kauffman, Wellington, New Zealand, August 17, 2016.

3. Kruger interview, August 17, 2016.

4. For example, the Ngai Tahu gave Aoraki / Mt. Cook back to the country after its settlement.

5. Kruger interview, August 17, 2016; Kirsti Luke, interview with the author, Wellington, New Zealand, August 17, 2016.

6. According to Te Ahukaramū Charles Royal (2007), "mana refers to an extraordinary power, essence or presence. This applies to the energies and presences of the natural world. . . . Mauri is an energy which binds and animates all things in the physical world. Without mauri, mana cannot flow into a person or object."

7. While they are extremely important for the Tūhoe iwi, details of the Tūhoe Claims Settlement Act are beyond the scope of this chapter.

8. Kruger interview, August 17, 2016.

9. As part of the reorganization that occurred around the treaty settlement process, the Tūhoe consolidated various Tūhoe *hapū* land trusts and other resources into one account to be able to make investments that benefited the Tūhoe iwi as a whole.

10. Kirsti Luke, interview with Craig Kauffman, Whakatane, New Zealand, June 1, 2019.

11. Multiple members of the bush crew referred to listening to "the voice of Te Urewera" in a joint interview with Craig Kauffman, Te Urewera, New Zealand, May 26, 2019.

12. Tamati Kruger, interview with Craig Kauffman, Taneatua, New Zealand, May 27, 2019.

13. Leader of Te Uru Taumatua operations team in Waikaremoana, interview with Craig Kauffman, Waikaremoana, New Zealand, May 30, 2019.

14. Kirsti Luke, interview with Craig Kauffman, Whakatane, New Zealand, May 26, 2019.

15. Luke interview, August 17, 2016.

16. The building's story is featured in the award-winning documentary *Ever the Land* (Grohnert 2015).

17. For living building standards, see International Living Future Institute, n.d.

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CHAPTER 7

1. Regarding tribal nations, we note that Earth jurisprudence has been a norm in many of their cultures for millennia and that RoN is a Western legal application of their long-held beliefs and practices.

2. PGE cited the US Constitution's Contracts Clause, Due Process Clause, Equal Protection Clause, Petition Clause, and Supremacy Clause.

3. Reply to Plaintiffs Opposition to Motion to Intervene by Little Mahoning Watershed and East Run Hellbenders Society, Inc., CIV. NO.: 1:14-cv-209, December 18, 2014, p. 3. In section 2 of the ordinance, subsections d and e outline Nature's rights. Subsection 2f specifies the right of residents to enforce these rights and intervene.

4. Stacey Long, Grant Township Supervisor Vice-Chair , email correspondence with Pamela Martin, September 27, 2019.

5. Marsha Moutrie, telephone interview with Pamela Martin, October 29, 2019.

6. Linda Sheehan, telephone interview with Pamela Martin, September 22, 2016.

7. These and other data regarding sustainability in Santa Monica are available at the website (City of Santa Monica, n.d.).

8. At the time of this writing, eight tribes in North America—the ʔEsdilagh First Nation of Canada, the Ho-Chunk Nation, the Menominee Tribe, the Navajo Nation, the Nez Perce Tribe, the Ponca Nation, the White Earth Band of Ojibwe, and the Yurok Tribe—recognized RoN in their constitutions or tribal laws.

9. The Chippewa and Ojibwe refer to themselves in their original language as the Anishinaabe.

CHAPTER 8

1. We note that in 2017 the Madhya Pradesh state legislature in India passed legislation recognizing the Narmada River as a living entity with legal rights. However, no laws recognize RoN for the rivers addressed by the court rulings mentioned.

2. Portions of this chapter are excerpted from Craig M. Kauffman and Pamela L. Martin, "How Courts Are Developing River Rights Jurisprudence: Comparing Guardianship in New Zealand, Colombia, and India," *Vermont Journal of Environmental Law* 20 (3), 2019, 260–289. Reprinted with permission.

3. For example, the Te Awa Tupua treaty settlement and subsequent act were widely publicized by the Earth Law Center, the Global Alliance for the Rights of Nature, and the UN Harmony with Nature Programme.

4. The constitutional articles referred to are 1, 2, 5, 8, 11, 12, 13, 16, 22, 44, 48, 49, 63, 65, 67, 70, 72, 79, 80, 188, 189, 288, 298, 311 339, 356, 357, 365, and 366.

5. A notable exception is Kothari and Bajpai 2017.

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CONCLUSION

1. In contemporary usage, a tutela is "a constitutional injunction that aims to protect fundamental constitutional rights when they are violated or threatened by the action or omission of any public authority" (Zuleta and Rincón 2019).

2. We are indebted to Kirsti Luke and Tamati Kruger of the Tūhoe iwi in Te Urewera, New Zealand, for this insight.

3. We address examples from Latin America, North America, and New Zealand in chapters 4–8. One example from Europe is the Sami Nation in Sweden, whose parliament endorsed the Universal Declaration of the Rights of Mother Earth in 2018 (Rights of Nature Sweden 2018).

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